

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION APPEAL NO. 18 OF 2025**

Sedhram Nilkanth Muglikar And Anr. ...Appellants
Versus
M. R. Makhare Arbitrator Arbitral Authority And Ors. ...Respondents

**WITH
INTERIM APPLICATION NO. 10185 OF 2025
IN
ARBITRATION APPEAL NO. 18 OF 2025**

—————

Mr. Gaurav Sharma a/w Mr. Rushikesh Bhadre, Mr. Hrutik Chavan and Mr. Soham Salunke, for the Appellants.

—————

**CORAM : ARIF S. DOCTOR, J.
DATE : 2nd JULY, 2026**

P.C.

1. The captioned Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996, and challenges the Judgment and Order dated 4th April 2025 passed by the learned District Judge-2, Pune, by which the Appellants' Petition under Section 34 of the Arbitration and Conciliation Act, 1996, by which the Petitioner had sought to have the arbitral award dated 6th November 2023 set aside, came to be rejected.

2. The Respondents though served, have chosen not to appear despite having been afforded ample opportunity. The Appeal is therefore taken up for final hearing.
3. Mr. Sharma, learned Counsel appearing on behalf of the Appellants submitted that the challenge to the arbitral award was on the sole ground that the Appellants were never given proper notice either of the appointment of the Arbitral Tribunal or of the Arbitral Proceedings and thus were deprived of an opportunity to present their defence to the Respondents claim. It was thus that he submitted that the award was vitiated under the provisions of Section 34(2)(a)(iii) of the Arbitration and Conciliation Act, 1999.
4. Learned Counsel then pointed out that the Arbitral Proceedings had commenced on 11th August 2023 and culminated in the passing of the award on 6th November 2023. He then invited my attention to the record/minutes maintained by the Tribunal, which in fact reflected that service upon the Appellants was never duly effected. He pointed out from the record/minutes that with regard to service upon the Appellants (who were Opponent Nos. 1 and 4) in the Arbitral Proceedings, it was returned with the endorsement “left address”. He pointed out that the record/minutes of 18th August 2023 recorded

that notice could not be served on Opponent Nos. 1 and 4 as the premises were “door locked”, as reflected in the postal tracking report received from the Indian Postal Department. He then submitted that the record/minutes of 5th September 2023 recorded that Appellant No. 1 (Opponent No. 1) had been served at a “second address”; however, such “second address” was wholly unexplained, and the arbitral record nowhere recorded what this alleged second address was or how the Tribunal was made aware of the same. Crucially, he pointed out that even the mode of this so-called service was not stated.

5. He then pointed out that, insofar as Appellant No. 2 (Opponent No. 4) was concerned, the postal endorsement merely recorded “Intimation delivered”.

Mr. Sharma submitted that Appellant No. 2 is the wife of Appellant No. 1 and both have throughout resided at the same address. He then also pointed out that the Tribunal had left unexplained the mode of service or at which address Appellant No. 2 was served or how such a “second address” came to the knowledge of the Tribunal.

6. Mr. Sharma then submitted that the Appellants could never have been served at the address which was available with the bank since the Appellants had

shifted from that address to another address in the same colony since the Appellants were residing throughout on a leave and licence basis. In support of his contention, he placed reliance upon the following Leave and Licence Agreements:

- (i) Flat No. M-903, Yuthika, Veerbhadra Nagar, Baner, Pune, under Leave and Licence Agreement dated 10th June 2019 (occupation from 1st June 2019 to 30th April 2020);
- (ii) Flat No. O-902, Yuthika, Veerbhadra Nagar, Baner, Pune, under Leave and Licence Agreements dated 25th February 2020 and 2nd January 2022 (occupation from 1st March 2020 to 31st December 2023); and
- (iii) Flat No. J-402, Yuthika, Veerbhadra Nagar, Baner, Pune, under Leave and Licence Agreement dated 4th December 2022 (occupation from 1st December 2022 to 30th November 2025).

7. Basis the above, he submitted that at the time the Respondent Bank had invoked arbitration, the Appellants had already shifted from the address furnished to the bank at the time of availing the loan facility to another flat within the same complex. He therefore submitted that the Bank could not

have legitimately proceeded on the assumption that the earlier address remained the Appellants' operative address and that nothing on record showed any "second address" was made available to the bank.

8. Mr. Sharma then submitted that, quite apart from the question of physical service, the Respondent Bank was at all material times in possession of the Appellants' functional e-mail addresses. He took pains to point out that despite this, neither the notice invoking arbitration nor the notice of any of the arbitration hearings/meetings was ever served upon the Appellants by email.
9. He submitted that most curiously, the arbitral award itself was never served by the learned Arbitrator upon the Appellants in accordance with Section 31(5) of the Arbitration and Conciliation Act, 1996, but was instead sent by the Respondent bank via e-mail on 1st December 2023 from the Respondent's e-mail address, i.e., "deccangymkhana@abhyudayabank.net", to Appellant No. 1 at the e-mail address of Appellant No. 1, i.e., "srivariinfrapune@gmail.com".
10. Mr. Sharma, then took pains to point out that the fact that the award could be sent by email and no intimation of either the invocation of the arbitration proceedings was sent by email was also crucial to note. He submitted that if

the Respondent Bank was able to communicate the award by e-mail immediately after it was passed, there was no reason why an attempt was not made to notify the Appellants of the arbitration proceedings by e-mail or to furnish the email address of the Appellants to the Tribunal. He submitted that the fact that e-mail communication was resorted to only after the award had been rendered, according to him, unmistakably demonstrated that the Appellants were denied any real or effective opportunity to participate in the arbitral proceedings.

11. He further submitted that the learned Arbitrator had proceeded with undue haste and repeatedly invoked the deeming fiction under Section 3 of the Arbitration and Conciliation Act, 1996, despite the postal record itself disclosing repeated failures of service. He submitted that the endorsements “left address”, “door locked”, “undelivered”, “item returned” and “unclaimed”, according to him, could never have been treated as constituting actual or effective service, particularly when the Respondent Bank was aware that the Appellants were no longer residing at the address originally furnished. He pointed out that during the entirety of the arbitral proceedings in 2023, the Appellants’ operative residential address was Flat No. J-402,

Yuthika, Veerbhadra Nagar, Baner, Pune, and no attempt whatsoever was made to effect service at that address.

12. He submitted that the Tribunal had incorrectly invoked and mechanically applied the provisions of Section 3(1)(b) of the Arbitration and Conciliation Act, 1996. He submitted that service cannot be presumed where the record itself demonstrates that the notices had not reached the intended recipients and where no reasonable efforts had been undertaken to ascertain or serve the Appellants at their operative address. He thus submitted that the Award was vitiated as being violative of the provisions of Section 34(2)(a)(iii).
13. Mr. Sharma submitted that the learned District Judge had also erred in upholding the arbitral award on the basis of presumed or deemed service notwithstanding the material on record. He then pointed out from the impugned order that it had erroneously held that the defect in service was a mere procedural irregularity. He submitted that defective service can never be a procedural irregularity and that the Tribunal was required to ensure that service was validly effected upon the Appellants before proceedings in the Arbitral Proceedings. He therefore submitted that defective service was, in fact, a fundamental flaw in the procedure that the Tribunal was required to

adopt. He submitted that on this ground alone, the Arbitral Award would have to be set aside, as also the impugned Judgment dated 4th April 2025.

14. Having heard Mr. Sharma at length and having independently perused the arbitral record, and also noting the fact that the Respondent though served, has not appeared and denied the case set out in the Appeal, I find considerable substance in the submissions advanced on behalf of the Appellants.
15. The material placed before me clearly indicates that the Appellants were not effectively served with either the notice of appointment of the learned Arbitrator or the notices relating to the arbitral proceedings. Indeed, the record suggests that no genuine or meaningful attempt was made to secure such service. It is, to my mind, indeed crucial that, although the Respondent Bank admittedly had the e-mail address of Appellant No. 1, no attempt whatsoever was made to serve Appellant No. 1 by email.
16. Equally significant is the fact that the arbitral record nowhere discloses what the so-called “second address” of Appellant No. 1 was, how such address came to be identified, or upon what material the learned Arbitrator concluded that service had been effected thereat. Similarly, the endorsement “Intimation

delivered” against Appellant No. 2, without anything more, cannot constitute proof of effective service.

17. On an independent scrutiny of the arbitral record, I find no documentary material evidencing actual service upon either of the Appellants. The Respondents have not appeared to point out anything to the contrary. The repeated postal endorsements indicating unsuccessful attempts at service could not be treated as sufficient compliance with the requirements of natural justice or the Arbitration and Conciliation Act, 1996, given the facts of the present case.
18. What lends further support to the Appellants’ case is the conduct of the Respondents before this Court. Despite being duly served and afforded ample opportunity, the Respondents have chosen not to appear to defend either the arbitral award or the impugned judgment. Consequently, the factual assertions made in the Appeal regarding the absence of service have remained wholly uncontroverted.
19. Having considered the record in its entirety, I am unable to concur with the reasoning adopted by the learned District Judge, particularly the observations

contained in paragraph 14 of the impugned judgement, which reads as follows:

14. It is a matter of record that again opponent Nos.1 and 4 were tried to be served. But that service was tried to be made to serve to opponent Nos.1 and 4 with show-cause notice for an interim order. As per the findings recorded by the learned arbitrator initially opponent No.2 filed a written statement that too after setting aside ex parte order. Initially the disputant bank examined its witness. When here was the written statement of opponent No.2 again the disputant bank examined its witness on 05.10.2023. On that day itself the disputant bank moved an application for an interim order. On that application the learned arbitrator passed an ad-interim interim order with a show-cause notice. That show-cause notice was tried to be served. As per the postal track report opponent Nos.1 and 4 were tried to be served but they could not be served in view of the postal track report as "Item Returned Addressee moved". The postal track reports of both the opponents are at Exh.38 and 39. They were tried to be served on the very same address i.e. flat No.902 as above. The arbitral tribunal treated the above service as proper on the basis of the one application by the disputant bank and in view of enabling provision as per section 3 (1) (d) of the Arbitration Act. However, even ignoring the above, it cannot be said that only because this service can be doubted as not proper service, the earlier service as per paragraph No.8 reproduced (supra) was also not proper. At the same time, as it was the last known address to the disputant bank even this service cannot be strictly doubted as not proper service. Hence, I can conclude that initially there was proper service on opponent Nos.1 and 4. Then in view of Exh.39 and 40 there was a deemed proper service. Hence, on two occasions opponent Nos.1 and 4 were served."

20. The reasoning adopted by the learned District Judge proceeds on the assumption that there had been valid initial service followed by deemed service under Section 3 of the Arbitration and Conciliation Act, 1996. In my considered view, that conclusion is not borne out from the arbitral record. The very foundation for invoking deemed service is absent. Where the record itself reveals repeated failures of service, unexplained references to an unidentified “second address”, and no proof whatsoever of actual communication reaching the Appellants, the deeming provisions under Section 3 cannot be mechanically invoked to cure the defect. The learned District Judge, in overlooking these fundamental defects, committed a manifest error in refusing to set aside the arbitral award.

21. In my view, the Appeal deserves to be allowed. Hence the following Order.

ORDER

(i) The impugned Judgment and Order dated 4th April 2025 and also the Arbitral Award dated 6th November 2023 are both set aside.

[ARIF S. DOCTOR, J.]