

Tata Capital Housing Finance Limited vs Mr. Vivian Joseph & Anr. on 27 March, 2025

Author: Purushaindra Kumar Kaurav

Bench: Purushaindra Kumar Kaurav

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 29/2025 & I.A. 266/2025

Date of Decis

IN THE MATTER OF:

TATA CAPITAL HOUSING FINANCE LIMITEDPetitioner

Through: Mr. Vishwanathan Iyer and
Sharma, Advs.

versus

MR. VIVIAN JOSEPH & ANR.

Through: None.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. Affidavit of service dated 28.01.2025 filed by the petitioner, reads as under:-

"2. ...I have affected the service of the petition to Respondent along with notice through

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(A) Speed-post dated January 20, 2025. The notice with consignment number bearing SU001588937IN was delivered at the given address of Respondents however, notice with consignment no.s SU001588923IN, SU001588954IN, SU001588945IN, and SU001588910IN were returned. Copy of the postal tracking receipts wherein the shipment was successfully delivered is annexed hereto and marked ANNEXURE P-1a and postal tracking receipts wherein the shipment was not delivered is annexed hereto and marked as ANNEXURE P-1b.

(B) Courier dated January 20, 2025. The said Couriers were not delivered at the given addresses of Respondents and were returned undelivered. Copy of the courier receipt is annexed hereto and marked as ANNEXURE Digitally Signed By:PRIYA Digitally Signed Signing Date:29.03.2025 By:PURUSHAINDRA 16:25:17 KUMAR KAURAV P-2.

(C) Email dated January 27, 2025 timed at 03:39PM, from my official email address i.e., pooja.sharma@anandsharmaassociates.com to the email address of the Respondent i.e.,

veorrey@gmail.com. The above said email has not bounced back, therefore the same is deemed to have been delivered to the Respondents. Therefore, the electronic service of Notice is affected as per the order. Copy of email dated January 27, 2025 is annexed hereto and marked ANNEXURE P-3.

(D) WhatsApp message dated January 27, 2025 timed at 03:15 PM from my WhatsApp account to Respondent's registered number i.e., +91 99582 21047. The said message is delivered to the Respondent and the same shows double tick therefore, service via WhatsApp is also affected as per order. Copy of WhatsApp message dated January 27, 2025 is annexed hereto and marked as ANNEXURE P-4.

3. I say that the service upon the Respondents is complete and that whatever stated herein is true and correct."

2. Despite the aforesaid, no one appears for the respondents. The service deems to have been completed.

3. The petitioner is a company duly incorporated under the Companies Act, 2013 and is engaged in the business of extending Housing finances/Housing loans to various types of borrowers.

4. As per the case set up by the petitioner, respondent No.1 along with respondent No.2 approached the petitioner for availing financial facility against certain properties. The petitioner had sanctioned loan facility of Rs.1,10,60,000/- vide sanction letter dated 01.09.2019. Subsequently, the respondent appears to have requested for Special Purpose Loan Facility for an amount of Rs.1,42,765/- which was also sanctioned by the petitioner vide sanction letter dated 21.09.2019.

5. Pursuant to sanctioning of loan, loan agreements were executed between the petitioner and respondents. The respondent then defaulted in repayment of the loan which resulted in taking up various steps under the Digitally Signed By:PRIYA Digitally Signed Signing Date:29.03.2025 By:PURUSHAINDR 16:25:17 KUMAR KAURAV provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

6. Since the respondents have not paid the outstanding loan amount, the petitioners sent a legal notice dated 30.06.2024 invoking the Arbitration Clause.

7. The Clause 12 of Home Loan Agreement reads as under:

"12. Dispute Resolution if any dispute, difference or claim arises between any of the Obligors and the Lender in connection with the Facility or as to the interpretation, validity, implementation or effect of the Facility Documents or as to the rights and liabilities of the parties under the Facility Documents or alleged breach of the Facility Documents or anything done or omitted to be done pursuant to the Facility Documents, the same shall be settled by arbitration to be held in [Mumbai/Delhi/Kolkata/Chennai] as may be decided by the Lender in accordance with the Arbitration and Conciliation Act, 1996, or any statutory amendments thereto

and shall be referred to a sole arbitrator to be appointed by the Lender. The award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be in English language. Cost of arbitration shall be borne by the Obligors. Notwithstanding anything contained hereinabove, the Lender reserves the right to, at its option, also enforce the security under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") or proceed to recover dues from the Obligors under the SARFAESI Act and/or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("DRT Act").

8. It is seen that the dispute has arisen between the parties and is capable of being adjudicated by way of arbitration proceedings. It is evident that where there exists an arbitration clause and in the event any dispute has arisen between the parties, there is no impediment in appointing an independent Sole Arbitrator. Reference can be made to the decisions of the Supreme Court in Perkins Eastman Architects DPC v. HSCC (India) Ltd.,¹ (2020) 20 SCC 760.

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TRF Limited v. Energo Engineering Projects Ltd.,² Bharat Broadband Network Limited v. United Telecoms Limited.,³ and Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re 4.

9. Taking into consideration the exposition of law which has been laid down by the Supreme Court in various cases it can be safely concluded that in cases where the parties have agreed for resolving their disputes by way of the arbitration, the Court need not to conduct detailed enquiry and by leaving the rights of the parties to be agitated before the Arbitrator, an Arbitrator can be appointed.

10. In view of aforesaid, the Court appoints Ms. Anuradha Mishra, Advocate (Mob No.+91-9971391034, Email id-

advanuradhamishrao9@gmail.com) as the Sole Arbitrator to adjudicate the dispute between the parties.

11. The Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties, requisite disclosures as required under Section 12 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "A&C Act").

12. The Sole Arbitrator shall be entitled to fee in accordance with the IVth Schedule of the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

13. The parties shall share the arbitrator's fee and arbitral cost, equally.

14. All rights and contentions of the parties in relation to the (2017) 8 SCC 377.

2019 SCC OnLine SC 547.

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claims/counter claims are kept open, to be decided by the Sole Arbitrator on their merits, in accordance with law.

15. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy between the parties. All rights and contentions of the parties in this regard are reserved. Let the copy of the said order be sent to the newly appointed Arbitrator through the electronic mode as well.

16. All the rights and contentions of the parties stand reserved.

17. Petition stands disposed of.

18. All the rights and contentions of the parties stand reserved.

19. Petition stands disposed of along with pending application.

PURUSHAINDR KUMAR KAURAV, J MARCH 27, 2025/ P/@m Click here to check corrigendum, if any 2023 SCC OnLine SC 1666.

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