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BANK OF BARODA

v.

KOTAK MAHINDRA BANK LTD.

(Civil Appeal No. 2175 of 2020)

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MARCH 17, 2020

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

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Limitation Act, 1963 – Arts. 136 and 137 – Executing a decree passed by a foreign court (from a reciprocating country) in India – Period of limitation for – Held: The limitation period for executing a decree passed by a foreign court (from a reciprocating country) in India will be the limitation prescribed in the reciprocating foreign country – However, this will be subject to the decree being executable in terms of s.13 of the CPC.

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Code of Civil Procedure, 1908 – s. 44A – Limitation Act, 1963 – s.44A indicates period of limitation to execute the foreign decree or not – Held: s.44A only empowers the District Court to execute the foreign decree as if it had been passed by the said District Court – s.44A enables the District Court to execute the decree and further provides that the District Court shall follow the same procedure as it follows while executing an Indian decree, but it does not lay down or indicate the period of limitation for filing such an execution petition.

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Limitation Act, 1963 – Art. 137 – From which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India – Held: The period of limitation would start running from the date the decree was passed in the foreign Court of a reciprocating country – However, if the decree-holder first takes steps-in-aid to execute the decree in the cause country i.e. the country in which decree was issued, and the decree is not fully satisfied, then he can then file a petition for execution in India within a period of 3 years from the finalisation of the execution proceedings in the cause country.

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Dismissing the appeal, the Court

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HELD: Does Section 44A merely provide for manner of execution of foreign decrees or does it also indicate the period of limitation for filing execution proceedings for the same?

1. In view of this Court, Section 44A of Code of Civil Procedure, 1908 is only an enabling provision which enables the District Court to execute the decree as if the decree had been passed by an Indian court and it does not deal with the period of limitation. A plain reading of Section 44A clearly indicates that it only empowers the District Court to execute the foreign decree as if it had been passed by the said District Court. It also provides that Section 47 of the Act shall, from the date of filing of certified copy of the decree, apply. Section 47 deals with the questions to be determined by the court executing a decree. Execution of a decree is governed under Order 21 of CPC and, therefore, the provisions of Section 47 of the Act and Order 21 of CPC will apply. In view of this Court, Section 44A has nothing to do with limitation. [Para 19][503-C-E]

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2. Section 44-A clearly provides that it is only after the filing of the certified copy and the certificate, that the provision of Section 47 CPC will become applicable. This clearly indicates that this section only lays down the procedure to be followed by the District Court. [Para 20][503-F]

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3. In view of this Court Section 44A only enables the District Court to execute the decree and further provides that the District Court shall follow the same procedure as it follows while executing an Indian decree, but it does not lay down or indicate the period of limitation for filing such an execution petition. [Para 21][504-A-B]

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What is the period of limitation for executing a decree passed by a foreign court (from a reciprocating country) in India?

4. The old position under common law was that limitation was treated as a procedural law. In countries following civil jurisdiction, the law of limitation has never been treated as a procedural law but as a substantive law. In recent years, almost all the common law countries have either brought a new legislation

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A or by judicial decisions have now taken the view that the law of limitation cannot be treated as a purely procedural law. Reference may be made to the law in the United Kingdom and the United States of America. [Para 31][509-E-F]

B 5. The view worldwide appears to be that the limitation law of the *cause country* should be applied even in the *forum country*. Furthermore, this Court is of the view that in those cases where the remedy stands extinguished in the *cause country* it virtually extinguishes the right of the decree-holder to execute the decree and creates a corresponding right in the judgment debtor to challenge the execution of the decree. These are substantive rights and cannot be termed to be procedural. As India becomes a global player in the international business arena, it cannot be one of the few countries where the law of limitation is considered entirely procedural. [Para 33][511-C]

D 6. It has been already clearly indicated that if the law of a *forum country* is silent with regard to the limitation prescribed for execution of a foreign decree then the limitation of the *cause country* would apply. [Para 34][511-D]

E 7. This Court answers the question by holding that the limitation period for executing a decree passed by a foreign court (from reciprocating country) in India will be the limitation prescribed in the reciprocating foreign country. Obviously this will be subject to the decree being executable in terms of Section 13 of the CPC. [Para 35][511-E]

F From which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India?

G 8. The question that then arises is that from which date the limitation starts. This Court envisages of 2 situations only. The first situation is one where the decree holder does not take any steps for execution of the decree during the period of limitation prescribed in the *cause country* for execution of decrees in that country. In such a case he has lost his right to execute the decree in the country where the cause of action arose. It would be a travesty of justice if the person having lost his rights to execute the decree in the *cause country* is permitted to execute the decree

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in a *forum country*. This would be against the principle which we have accepted, that the law of limitation is not merely a procedural law. This would mean that a person who has lost his/her right or remedy to execute the foreign decree in the court where the decree was passed could take benefit of the provisions of the Indian law for extending the period of limitation. In the facts of the present case, the limitation in India is 12 years for executing a money decree whereas in England it is 6 years. There may be countries where the limitation for executing such a decree may be more than 12 years. The right of the litigant in the latter situation would not come to an end at 12 years and it would abide by the law of limitation of the *cause country* which passed the decree. Hence, limitation would start running from the date the decree was passed in the *cause country* and the period of limitation prescribed in the *forum country* would not apply. In case the decree holder does not take any steps to execute the decree in the *cause country* within the period of limitation prescribed in the country of the cause, it cannot come to the *forum country* and plead a new cause of action or plead that the limitation of the *forum country* should apply. [Para 40][513-H; 514-A-E]

9. The second situation is when a decree holder takes steps-in-aid to execute the decree in the *cause country*. The proceedings in execution may go on for some time, and the decree may be executed, satisfied partly but not fully. The judgment debtor may not have sufficient property or funds in the *cause country* to satisfy the decree etc. In such eventuality what would be done? In view of this Court, in such circumstances the right to apply under Section 44A will accrue only after the execution proceedings in the *cause country* are finalised and the application under Section 44A of the CPC can be filed within 3 years of the finalisation of the execution proceedings in the *cause country* as prescribed by Article 137 of the Act. The decree holder must approach the Indian court along with the certified copy of the decree and the requisite certificate within this period of 3 years. It is clarified that applying in the *cause country* for a certified copy of the decree or the certificate of part-satisfaction, if any, of the decree, as required by Section 44A will not tantamount to step-in-aid to execute the decree in the *cause country*. [Paras 41, 42][514-F-H; 515-A]

- A **10. This Court answers the third question accordingly and hold that the period of limitation would start running from the date the decree was passed in the foreign court of a reciprocating country. However, if the decree holder first takes steps-in-aid to execute the decree in the *cause country*, and the decree is not fully satisfied, then he can then file a petition for execution in India within a period of 3 years from the finalisation of the execution proceedings in the *cause country*. [Para 43][515-B]**
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Income Tax Commissioner v. S. Teja Singh AIR 1959 SC 352 : [1959] Suppl. SCR 394 – referred to.

- C *Lakhpur Rai Sharma v. Atma Singh* AIR (58) 1971 P & H 476; *Uthamram v. K.M. Abdul Kasim Co.* (AIR 1964) (Mad 221) – referred to.

Sheik Ali v. Sheik Mohamed AIR 1967 Mad 45 – not approved.

- D *East End Dwellings Co. Ltd. v. Finsbury Brough Council* 1951 (2) All E.R. 587 – referred to.

Sir Lawrence Collins et. al., “Dicey, Morris, & Collins on The Conflict of Laws , 14th Edn., Sweet & Maxwell pp. 198-199 (2006) – referred to.

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Case Law Reference

[1959] Suppl. SCR 394 referred to Para 18

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2175 of 2020.

- F From the Judgment and Order dated 13.11.2014 of the High Court of Karnataka at Bangalore in Civil Revision Petition No.433 of 2013.

K. K. Venugopal, A.G., Ms. Praveena Gautam, Deepak Tyagi, Pawan Shukla, Ankur Talwar, Raja Ram, Ms. Sweety Pandey, Sai Anukaran, Advs. for the Appellant.

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V. V. S. Rao, Sr. Adv., D. Bharat Kumar, Tadimalla Bhaskar Gowtham, Aman Shukla, Siddharth Sinha, Vishal Arun, Raghu Vamsy D.V., Advs. for the Respondent.

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The Judgment of the Court was delivered by A
DEEPAK GUPTA, J.

1. Leave granted.

2. “What is the limitation for filing an application for execution of a foreign decree of a reciprocating country in India?” is the short but B
interesting question which arises for decision in this case.

3. Vysya Bank, which is the predecessor of the respondent Kotak Mahindra Bank Ltd., issued a letter of credit for US \$1,794,258 on behalf of its customer M/s. Aditya Steel Industries Limited in favour of M/s. Granada Worldwide Investment Company, London. The appellant C
Bank of Baroda was the confirming bank to the said letter of credit. The Vysya Bank issued instructions to the London branch of the appellant on 12.10.1992 to honour the letter of credit. Acting on this instruction the London branch of the appellant discounted the letter of credit for a sum of US \$ 1,742,376.41 and payment of this amount was made to M/s Granada Worldwide Investment Company on 13.10.1992. D

4. The appellant Bank of Baroda filed a suit against the Vysya Bank for recovery of its dues on 19.04.1993 in London. This suit was decreed by the High Court of Justice, Queens Bench, Divisional Commercial Court of London (hereinafter referred to as the ‘London Court’) on 20.02.1995 and a decree for US \$1,267,909.26 along with E
interest thereon was passed in favour of the appellant bank and against Vysya Bank. The decree was not challenged and became final.

5. It appears that some talks went on between the two banks with regard to the satisfaction of the decree. On 28.08.1995, Vysya Bank placed an inter-bank deposit of US \$ 1,400,000 with the main branch of F
the Bank of Baroda on rollover basis with a request that the decree passed by the London Court be not executed. However, later in 2003 ING Vysya Bank, filed a petition before the Debt Recovery Tribunal (DRT) for recovery of US \$1,400,000. Those proceedings are being contested by the Bank of Baroda and it appears that the proceedings G
before the DRT are still pending and we make it clear that anything said by us in this appeal will not affect those proceedings, since we are only dealing with the issue of limitation for filing an execution petition of a decree passed by a foreign court of a reciprocating country.

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A 6. On 05.08.2009, the appellant bank filed an execution petition
i.e. almost 14 years after the decree was passed by the London Court
for execution of the same in terms of Section 44A read with Order 21
Rule 3 of the Code of Civil Procedure, 1908 (CPC) for recovery of
Rs.16,43,88,187.86. This execution petition was contested mainly on the
B ground that the same had not been filed within the period of limitation.
On 20.07.2013 the Additional City Civil & Session Judge, Bangalore
dismissed the execution petition as time barred holding that Article 136
of the Limitation Act, 1963 (for short 'the Act') applies and the execution
petition should have been filed within 12 years of the decree being passed
by the London Court. Aggrieved, the bank approached the High Court
C which vide judgment dated 13.11.2014 upheld the view of the trial court.

7. Sh. K. K. Venugopal, learned senior counsel appearing for the
appellant urged that the Act does not prescribe any period of limitation
for execution of a foreign decree passed in a reciprocating country. He
submits that in such eventuality principles of delay and laches as
D applicable to writ proceedings may apply and, therefore, he has relied
upon a long list of dates to show that the Bank of Baroda was pursuing
the matter and was trying its best to get the matter settled with Vysya
Bank and urges that there is no delay in filing the petition. His second
submission is that since no limitation is provided under the Act, the cause
of action to file an execution petition arises only when a petition is filed
E under Section 44A of the CPC which provides that a decree passed by
a court in a reciprocating country should be treated as an Indian decree
and, therefore, the limitation for 12 years provided under Article 136 of
the Act applies only from that date because that is the date when the
cause of action arises and the decree is treated to be an Indian decree.

F 8. On the other hand, Mr. V.V.S. Rao, learned senior counsel
appearing for the respondent urged that the law of limitation of England
would apply in this case. It is undisputed that the limitation period as per
English law is 6 years for execution of a decree, and hence the
respondent's submission is that the decree having been passed on
G 20.02.1995, no petition for execution of that decree could be filed after
20.02.2001. The alternative argument of learned senior counsel for the
respondent is that even if the Indian law of limitation were to apply, the
limitation period for execution of a foreign decree would be determined
as per Article 136 of the Act. Section 44A of the CPC clearly provides
that a decree passed in a reciprocating country should be treated as an
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Indian decree and, therefore, the same must be enforced within 12 years from the date of passing of the decree as provided by Article 136 of the Act. A

9. To appreciate the rival contentions of the parties, it would be necessary to refer to Section 44A of the CPC which reads as follows:

“44A. Execution of decrees passed by Courts in reciprocating territory.— (1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in as if it had been passed by the District Court. B

(2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment. C

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13. D

Explanation 1.— “Reciprocating territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and “superior Courts”, with reference to any such territory, means such Courts as may be specified in the said notification. E F

Explanation 2.— “Decree” with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment. G

10. At the outset, we may note that the aforesaid section was inserted in the CPC in the year 1937. Prior to that, a decree passed by any Court in a foreign country could not be executed in India and only a H

A suit could be filed on the basis of the judgment passed by a foreign court. Section 44A brought about a change in law in respect of reciprocating countries which agreed to respect the judgments and decrees passed in each other's courts. From a bare reading of Section 44A CPC it is crystal clear that it applies only to money decrees and not to other decrees.

B 11. Considering the rival arguments before us, the following issues arise for consideration:

- (i) Does Section 44A merely provide for manner of execution of foreign decrees or does it also indicate the period of limitation for filing execution proceedings for the same?
- C (ii) What is the period of limitation for executing a decree passed by a foreign court (from a reciprocating country) in India?
- (iii) From which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India?

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Question No. 1

12. A careful analysis of Section 44A hereinabove shows that a decree passed by any superior court of a reciprocating territory can be executed in India as if it had been passed by the District Court before whom it is filed. Sub-section (2) of Section 44A casts an obligation on the person filing such application to file a certified copy of the decree. Such person must also file a certificate from the superior court which passed the decree stating the extent, if any, to which the decree has been satisfied or adjusted. This certificate shall be conclusive proof of the extent of such satisfaction/adjustment. Sub-section (3) provides that from the date of filing of certified copy of the decree, the provisions of Section 47 of CPC shall apply to such proceedings. The District Court can refuse to execute any such decree if it falls within exceptions (a) to (f) of Section 13. The first Explanation provides the definition of reciprocating territory and superior courts. Explanation 2 is important which provides that a decree must be a decree under which a sum of money is payable excluding certain sums such as those payable as taxes, fines, penalties etc. and also excludes arbitration awards by the foreign courts.

13. At the outset, we may note that we are not at all in agreement with the submission of Shri K.K. Venugopal that no limitation is

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applicable. These are not writ proceedings but execution proceedings. A
The Act is a complete code in itself and Section 3 clearly sets out that
subject to the provisions contained in Section 4 to Section 24 of the Act,
every suit instituted, appeal preferred, and application made after the
prescribed period shall be dismissed even if limitation has not been set
up as a defence. The word ‘application’ used is wide enough to include B
an application filed for execution of a decree, even a foreign decree.
Therefore, the principles of delay and laches which may be applicable to
writ proceedings cannot be applied to civil proceedings and are not at all
attracted in proceedings filed under the CPC which, in our opinion, must
be filed within the prescribed period of limitation.

14. The main argument of Shri K.K. Venugopal is that limitation C
will start running only after the petition under Section 44A is filed.
According to him, the cause of action for executing the decree in India
arises only after the application under Section 44A is filed. This view
has also been taken by a Full Bench of the Madras High Court in the
case of *Sheik Ali* vs. *Sheik Mohamed*¹. This view is however contrary D
to the view taken by the Punjab & Haryana High Court in *Lakhpat Rai*
Sharma vs. *Atma Singh*².

15. We have carefully considered the matter and at the outset we
may note that there is no concept of cause of action in so far as an
execution petition is concerned. Cause of action is a concept relating to E
civil suits and not to execution petitions. Cause of action is nothing but a
bundle of facts which gives rise to a legal right enabling the plaintiff to
file a suit. On the other hand, a decree is a determination already made
by a court on the basis of a reasoned judgment. In case of a decree it
becomes enforceable the day it is passed. Therefore, we are clearly of F
the view that filing of an application under Section 44A will not create a
fresh period for enforcing the decree.

16. We clarify that for the purpose of this judgment we have used
the expressions, “*cause country*” which will mean the country in which
the decree was issued (in this case England), and “*forum country*” G
which would mean the country in which the decree is sought to be
executed (in this case India).

17. If we accept the view urged by Shri K.K. Venugopal, that the
date from which the limitation will be considered, will be the date of

¹ AIR 1967 Mad 45

² AIR (58) 1971 P&H 476

- A filing of certified copy of the decree it would lead to ludicrous results. Taking the example of the present case, the limitation to execute a decree in United Kingdom is 6 years. However, in India it is 12 years. The decree becomes enforceable on the date it was passed and, therefore, if the law of the *cause country* is to apply, the limitation would be 6 years and if the law of *forum country* were to apply, it would be 12 years.
- B If the view urged is accepted then the decree holder can keep silent for 100 years and, thereafter, file a certified copy of the decree and the certificate and then claim that the decree can be executed. That would make a mockery of the legal process not only of the *cause country* but also of the *forum country*. The clock of limitation cannot be kept in
- C abeyance for 100 years at the choice of the decree holder. We, therefore, reject this contention.

18. The main argument raised on behalf of the appellant is that sub-section (1) of Section 44A is a deeming provision which provides that the decree shall be executed as if it had been passed by an Indian
- D court. It is urged that this deeming provision should be given its full meaning and when the statute directs an imaginary state of affairs to be taken as real, one should imagine also as real the consequences and incidents which flow from the same. Reference has been made to the judgment in *East End Dwellings Co. Ltd. vs. Finsbury Borough Council*³ wherein it was held as follows:

- E “...If one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or
- F accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one’s imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

- G The aforesaid observations by the House of Lords have been approved by this Court in *Income Tax Commissioner vs. S. Teja Singh*⁴. The Madras High Court⁵ and the Punjab and Haryana High Court⁶ have

³ 1951 (2) All E.R. 587

⁴ AIR 1959 SC 352

⁵ In *Uthamram vs. K. M. Abdul Kasim Co.*, AIR 1964 Mad 221

H ⁶ In *Lakhpur Rai Sharma vs. Atma Singh*, AIR (58) 1971 P&H 476

taken the view that the foreign decree has to be executed in India as if it had been passed by an Indian court and the legal fiction must be extended to its logical end. Therefore, the foreign decree must be treated as an Indian decree as on the date it was passed. However, the Punjab and Haryana High Court held in **Lakhpai Rai Sharma** (supra) that if no step for execution of the decree and no step-in-aid for such an execution is taken in an Indian court on or before the limitation prescribed, then the execution petition has to be dismissed on the ground that it is time barred. It rejected the contention that the application for certificate of non-satisfaction given to the foreign court should be treated to be a step-in-aid and excluded while calculating the period of limitation.

19. Does Section 44A create a fresh period of limitation by extension of the deeming provision?. In our view, Section 44A is only an enabling provision which enables the District Court to execute the decree as if the decree had been passed by an Indian court and it does not deal with the period of limitation. A plain reading of Section 44A clearly indicates that it only empowers the District Court to execute the foreign decree as if it had been passed by the said District Court. It also provides that Section 47 of the Act shall, from the date of filing of certified copy of the decree, apply. Section 47 deals with the questions to be determined by the court executing a decree. Execution of a decree is governed under Order 21 of CPC and, therefore, the provisions of Section 47 of the Act and Order 21 of CPC will apply. In our considered view, Section 44A has nothing to do with limitation.

20. Section 44-A clearly provides that it is only after the filing of the certified copy and the certificate, that the provision of Section 47 CPC will become applicable. This clearly indicates that this section only lays down the procedure to be followed by the District Court. Though we do not approve of the view taken by the Madras High Court in **Sheik Ali** (supra), that limitation will start running on filing of an application under Section 44A, we only approve the following observations:

“(19) To sum up of our conclusions, we are of the view that S. 44-A(1) is confined to the powers and manner of execution and has nothing to do with the law of limitation. The fiction created by the sub-section goes no further and is not for all purposes, but is designed to attract and apply to execution of foreign judgments by the District Court its own powers of execution and the manner of it in relation to its decrees, without reference to limitation...”

A 21. In our view Section 44A only enables the District Court to execute the decree and further provides that the District Court shall follow the same procedure as it follows while executing an Indian decree, but it does not lay down or indicate the period of limitation for filing such an execution petition. We answer question number 1 accordingly.

B **Question No.2**

22. Articles 136 and 137 of the Act read as follows:

Article 136, Limitation Act, 1963:

C	For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place:
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E			Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

F **Article 137, Limitation Act, 1963:**

PART II-OTHER APPLICATIONS

G	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues.
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H 23. If we hold that Article 136 is to apply then the period of limitation in case of any foreign decree would be 12 years regardless of the limitation which may be prevalent in the country where the decree was passed, i.e., the *cause country*. If the decree is to be executed in another

jurisdiction, i.e., the *forum country*, which law should apply? Whether the law of limitation as applicable in the *cause country* or the *forum country* would apply? A

24. There is also the issue of conflict of laws between the *cause country* and the *forum country*. As far as the present case is concerned, it is not disputed that the limitation for executing a decree in England is 6 years in terms of Section 24 of the Limitation Act of 1980 of the United Kingdom. Rule 40.7 of the Civil Procedure Rules of England provides that a judgment or order takes effect from the date it is given or made or such later date as the court may specify. The decree therefore becomes enforceable on the date when it was passed and as far as this case is concerned, the date of passing of the decree is 20.02.1995. If the limitation is 6 years then obviously the execution petition should have been filed on or before 20.02.2001 and if the limitation was 12 years in terms of Section 136 of the Act, the execution petition would still be barred by limitation as the execution petition was filed in 2009. B C

25. There is increasing interaction and interplay between the people across the globe. There are more and more international business deals being done. There is an increasing exchange of views in the fields of art, literature, sports, etc. Goods are sold across the world, online. All these could lead to litigation, which may have the cause in one country but the judgment debtor may not have any property in that *cause country* and the decree-holder would have to go to another country (*forum country*) to take benefit of the decree. D E

26. The earlier view was that the law of limitation being a procedural law, the law of the *forum country* would govern the field. This is reflected in Dicey's observations in 'Conflict of Laws', 6th Edition⁷, where it has been said as follows: F

“Whilst, however, it is certain that all matters which concern procedure are in an English court governed by the law of England, it is equally clear that everything which goes to the substance of a party's rights and does not concern procedure is governed by the law appropriate to the case. G

Our Rule is clear and well established. The difficulty of its application to a given case lies in discriminating between matters

⁷ J.H.C. Morris, et. al., (Eds.), “Dicey's Conflict of Laws”, 6th Edn., Stevens & Sons Ltd., Sweet & Maxwell, Ltd., pp.860-861 (1949).

- A which belong to procedure and matters which affect the substantive rights of the parties. In the determination of this question two considerations must be borne in mind:-(1) English lawyers give the widest possible extension to the meaning of the term ‘procedure’. The expression, as interpreted by our judges, includes all legal remedies, and everything connected with the enforcement of a right. It covers, therefore, the whole field of practice; it includes the question of set-off and counter-claim, the whole law of evidence, as well as every rule in respect of the limitation of an action or of any other legal proceeding for the enforcement of a right, and hence it further includes the methods, e.g., seizure of goods or arrest of person, by which a judgment may be enforced.”
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- Similar view was relied upon by the Division Bench of the Madras High Court in the case of *Uthamram* vs. *K. M. Abdul Kasim Co.*⁸, which held that the law of limitation of the *forum country* would apply.
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27. Indian Courts have normally taken the view that the law of limitation is a procedural law. We may point out that in Dicey’s ‘Conflict of Laws’ 14th Edition⁹, the view taken is entirely different. The present thinking appears to be that law of limitation is not procedural, especially when it leads to extinguishment of rights or remedies. Hence, it cannot be termed as a procedural law.
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28. At this stage we may refer to Dicey’s Conflict of Laws 14th Edn. which has summarised this change in view in the following words:-

- “The traditional approach has been thrown into some doubt by decisions in Australia and Canada. In *John Pfeiffer Pty Ltd v. Rogerson*, the High Court of Australia indicated (obiter) that, at common law, statutes of limitation are substantive, rather than procedural. In *Tolofson v. Jensen* the Supreme Court of Canada rejected the traditional common law classification of statutes of limitation and the distinction between right and remedy on which it is based and held that statutes of limitation are to be classified as substantive. This approach was confirmed in *Castillo v. Castillo*. The Supreme Court applied a one year limitation period
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⁸ AIR 1964 Mad 221

⁹ Sir Lawrence Collins et. al., “Dicey, Morris, & Collins on The Conflict of Laws”, 14th Edn., Sweet & Maxwell pp. 198-199 (2006).

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under the law applicable to the tort, Californian law, despite a provision of Alberta law which provided that Alberta limitation law (which had a two year period) should apply “notwithstanding that, in accordance with conflict of law rules, the claim will be adjudicated under the substantive law of another jurisdiction.” A majority of the Supreme Court of Canada held that this provision had no application because the claim was already time-barred when the action was brought.”

Even in relation to England it was observed:-

“Under the Foreign Limitation Periods Act 1984. The Act was based on the recommendations of the Law Commission. It adopts the general principle, subject to an exception based on public policy, that the limitation rules of the *lex causae* are to be applied in actions in England, even if those rules do not lay down any limitation period for the claim. English limitation rules are not to be applied unless English law is the *lex causae* or one of two *leges causae* governing the matter...”

29. This change in view can also be noted in the works of other authors. In Cheshire & North’s Private International Law (10th Edn.) it can be seen that as per the older rules, the limitation of English law would apply. Hence a claim would be allowed in England if it fell within the limitation period prescribed in its laws, even if the action was time-barred as per the foreign law applicable to the transaction/contract/dispute in question. However, this raised various issues which were also highlighted. It would be apposite to refer to the following paragraphs:-

“(I) *The time within which an action must be brought*

English law is unfortunately committed to the view that statutes of limitation, if they merely specify a certain time after which rights cannot be enforced by action, affect procedure, not substance. They concern, it is said, not the merits of the cause, but the manner in which the remedy must be pursued. They ordain that the procedure of the court is available only when set in motion within a certain fixed time after the cause of action arose. In the result, therefore, any relevant statute of limitation that obtains in the *lex fori* may be pleaded, while a statute of some foreign law, even though it belongs to the proper law of the transaction, must be disregarded.

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A The rules of English private international law upon this matter, however, pay little attention to the proper law of the transaction that is in issue. Thus in a report of a judgment by ROCHE, J., it is said: “Foreign courts might have decided that the laws of limitation were part of the substantive law, but he was unable to apply them as such.” The result of this attitude is twofold.

B Firstly, an English statute of limitation is a good idea plea to an action brought in England, notwithstanding that the action is still maintainable according to the proper law of the transaction.

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C Secondly, the extinction of the right of action by the proper law of the transaction is not a bar to an action in England. In other words, if the permissible period is longer in England than in the foreign country the plaintiff is at liberty to sustain his action here.

D 30. In Cheshire & North’s Private International Law (15th Edition) it is noted that this change of applying the law of limitation as applicable in the *cause country* whose law applies to the transaction/contract/dispute was a welcome one. The following paragraphs are relevant:-

E “(a) The time within which a action must be brought Until 1984, English law was committed to the view that statutes of limitation, if they merely specified a certain time after which rights could not be enforced by actin, affected procedure and not substance. This meant that limitation was governed by English law, as the law of the forum, and any limitation provision of the applicable law was ignored. Where, however, it could be shown that the effect of a statute of limitation of the foreign applicable law was not just to bar the plaintiff’s remedy, but also to extinguish his cause of action, then the English courts would be prepared to regard the foreign rule as substantive and to be applied in England.

F The common law rule, which has been criticised in a number of common law jurisdictions, tends to have no counterpart in civil law countries which usually treat statutes of limitations as substantive. Furthermore, the Contracts (Applicable Law) Act 1990, implementing the European Community Convention on the Law Applicable to Contractual Obligations (1980), provides that the law which governs the essential validity of a contract is to govern “the various ways of extinguishing obligations, and

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prescription and limitation of actions”. In 1982 the Law Commission concluded that “there is a clear case for the reform of the present English rule” and their recommendations formed the basis of the Foreign Limitation Periods Act 1984. A

The general principle of the 1984 Act abandons the common law approach which favoured the application of the domestic law of limitation. Instead, the English court is to apply the law which governs the substantive issue according to English choice of law rules, and this new approach is applied to both actions and arbitrations in England. In the case of those few tort claims, such as defamation, to which the common law choice of law rules still apply, English law, as the law of the forum, will remain relevant because of the choice of law rule which requires actionability both by the law of the forum and by the law of the place of the tort. The corollary of the main rule is that English law is no longer automatically to be applied. There is, of course, a significant difference between a rule under which a claim is to be held to be statute barred in England if statute barred under the governing law, a reform which seems widely to be welcomed, and a further rule that, if the claim is not statute barred abroad, it must be allowed to proceed in England.” B C D

31. The old position under common law was that limitation was treated as a procedural law. In countries following civil jurisdiction, the law of limitation has never been treated as a procedural law but as a substantive law. In recent years, almost all the common law countries have either brought a new legislation or by judicial decisions have now taken the view that the law of limitation cannot be treated as a purely procedural law. We may make reference to the law in the United Kingdom and the United States of America. E F

32. Section 1 of the Foreign Limitation Periods Act, 1984 as applicable to the United Kingdom reads as follows:

“Application of foreign limitation law. G

1. – (1) Subject to the following provisions of this Act, where in any action or proceedings in a court in England and Wales the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter— H

- A (a) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings, subject to sections 1A and 1B; and
- (b) except where that matter falls within subsection (2) below, the law of England and Wales relating to limitation shall not so
- B apply.
- (2) A matter falls within this subsection if it is a matter in the determination of which both the law of England and Wales and the law of some other country fall to be taken into account.
- C (3) The law of England and Wales shall determine for the purposes of any law applicable by virtue of subsection (1)(a) above whether, and the time at which, proceedings have been commenced in respect of any matter; and, accordingly, section 35 of the Limitation Act 1980 (new claims in pending proceedings) shall apply in relation to time limits applicable by virtue of subsection (1)(a) above as it
- D applies in relation to time limits under that Act.
- (4) A court in England and Wales, in exercising in pursuance of subsection (1)(a) above any discretion conferred by the law of any other country, shall so far as practicable exercise that discretion in the manner in which it is exercised in comparable cases by the
- E courts of that other country.
- (5) In this section “law”, in relation to any country, shall not include rules of private international law applicable by the courts of that country or, in the case of England and Wales, this Act.”
- F Several States in the United States of America have adopted the Uniform Conflict of Laws Limitation Act, 1982 evolved by the National Conference of Commissioners on Uniform State Laws. Sections 2 and 3 of this Act read as follows:
- “Section 2: (a) Except as provided by sec 4, if a claim is substantively based:
- G (1) upon the law of one other state, the limitation period of that state applies; or
- (2) upon the law of more than one state, the limitation period of one of those states chosen by the law of conflicts of
- H laws of this State, applies.

(b) The limitation period of this State applies to all other claims.” A

“Section 3: If the statute of limitations of another state applies to the assertion of a claim in this State, the other States’ relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period, but its statutes and other rules of law governing conflict of laws do not apply.” B

33. The view worldwide appears to be that the limitation law of the *cause country* should be applied even in the *forum country*. Furthermore, we are of the view that in those cases where the remedy stands extinguished in the *cause country* it virtually extinguishes the right of the decree-holder to execute the decree and creates a corresponding right in the judgment debtor to challenge the execution of the decree. These are substantive rights and cannot be termed to be procedural. As India becomes a global player in the international business arena, it cannot be one of the few countries where the law of limitation is considered entirely procedural. C

34. We have already clearly indicated that if the law of a *forum country* is silent with regard to the limitation prescribed for execution of a foreign decree then the limitation of the *cause country* would apply. D

35. We answer question no. 2 by holding that the limitation period for executing a decree passed by a foreign court (from reciprocating country) in India will be the limitation prescribed in the reciprocating foreign country. Obviously this will be subject to the decree being executable in terms of Section 13 of the CPC. E

Question No. 3

36. Coming to the third question, as far as Article 136 of the Act is concerned, we are of the view that the same only deals with decrees passed by Indian courts. The Limitation Act has been framed mainly keeping in view the suits, appeals and applications to be filed in Indian courts and wherever the need was felt to deal with something outside India, the Limitation Act specifically deals with that situation. We may refer to Article 39 of the Act which specifically deals with dishonoured foreign bills. Article 101 of the Act deals with suits filed upon a judgment including a foreign judgment. The framers of the Act specifically mentioned ‘including a foreign judgment’ in Article 101 of this very Schedule which is part of the Act. F

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A 37. When dealing with the applications for execution of decrees the law makers could have easily said 'including foreign decrees'. This having not been said, it appears that the intention of the legislature was that Article 136 would be confined to decrees of Indian courts. Furthermore, Article 136 clearly states that the decree or order should be of a civil court. A civil court, as defined in India, may not be the same as in a foreign jurisdiction. We must also note the fact that the new Limitation Act was enacted in 1963 and presumably the law makers were aware of the provisions of Section 44A of the CPC. When they kept silent on this aspect, the only inference that can be drawn is that Article 136 only deals with decrees passed by Indian civil courts.

C 38. Having said so, we are clearly of the view that some clarification needs to be given with regard to the period in which an application under Section 44A can be filed. In this regard, when we read sub-section (1) and sub-section (2) of Section 44A together it is obvious that what is required to be filed is a certified copy of the decree in terms of sub-section (1) and also a certificate from the court in the *cause country* stating the extent, if any, to which the decree has been satisfied or adjusted. These are the twin requirements and no foreign decree can be executed unless both the requirements are met. It is essential to file not only a certified copy of the decree but also the certificate in terms of sub-section (2). That, however, does not mean that nothing else has to be filed. The only inference is that the decree can be executed only once these documents are filed. The executing court cannot execute this decree and certificate unless the decree holder also provides various details of the judgment debtor that is, his address, etc. in India and the details of the property of the judgment debtor. These particulars will have to be provided by a written application filed in terms of clause (2) of Rule 11 of Order 21 of the CPC which reads as follows:

G (2) **Written application.** – Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :-

- (a) the number of the suit;
- (b) the names of the parties;

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- (c) the date of the decree; A
- (d) whether any, appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree; B
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed; C
- (h) the amount of the costs (if any) awarded;
- (i) the name of the person against whom execution of the decree is sought; and D
- (j) the mode in which the assistance of the Court is required whether-
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property; E
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) otherwise, as the nature of the relief granted may require. F

39. Therefore, a party filing a petition for execution of a foreign decree must also necessarily file a written application in terms of Order 21 Rule 11 clause (2) quoted hereinabove. Without such an application it will be impossible for the Court to execute the decree. In our opinion, therefore, this application for executing a foreign decree will be an application not covered under any other article of the Limitation Act and would thus be covered under Article 137 of the Limitation Act and the applicable limitation would be 3 years. G

40. The question that then arises is that from which date the limitation starts. We can envisage of 2 situations only. The first situation H

- A is one where the decree holder does not take any steps for execution of the decree during the period of limitation prescribed in the *cause country* for execution of decrees in that country. In such a case he has lost his right to execute the decree in the country where the cause of action arose. It would be a travesty of justice if the person having lost his rights to execute the decree in the *cause country* is permitted to execute the decree in a *forum country*. This would be against the principle which we have accepted, that the law of limitation is not merely a procedural law. This would mean that a person who has lost his/her right or remedy to execute the foreign decree in the court where the decree was passed could take benefit of the provisions of the Indian law for extending the period of limitation. In the facts of the present case, the limitation in India is 12 years for executing a money decree whereas in England it is 6 years. There may be countries where the limitation for executing such a decree may be more than 12 years. The right of the litigant in the latter situation would not come to an end at 12 years and it would abide by the law of limitation of the *cause country* which passed the decree. Hence, limitation would start running from the date the decree was passed in the *cause country* and the period of limitation prescribed in the *forum country* would not apply. In case the decree holder does not take any steps to execute the decree in the *cause country* within the period of limitation prescribed in the country of the cause, it cannot come to the
- E *forum country* and plead a new cause of action or plead that the limitation of the *forum country* should apply.

41. The second situation is when a decree holder takes steps-in-aid to execute the decree in the *cause country*. The proceedings in execution may go on for some time, and the decree may be executed, satisfied partly but not fully. The judgment debtor may not have sufficient property or funds in the *cause country* to satisfy the decree etc. In such eventuality what would be done? In our considered view, in such circumstances the right to apply under Section 44A will accrue only after the execution proceedings in the *cause country* are finalised and the application under Section 44A of the CPC can be filed within 3 years of the finalisation of the execution proceedings in the *cause country* as prescribed by Article 137 of the Act. The decree holder must approach the Indian court along with the certified copy of the decree and the requisite certificate within this period of 3 years.

- H 42. It is clarified that applying in the *cause country* for a certified copy of the decree or the certificate of part-satisfaction, if any, of the

decree, as required by Section 44A will not tantamount to step-in-aid to A
execute the decree in the *cause country*.

43. We answer the third question accordingly and hold that the
period of limitation would start running from the date the decree was
passed in the foreign court of a reciprocating country. However, if the
decree holder first takes steps-in-aid to execute the decree in the *cause* B
country, and the decree is not fully satisfied, then he can then file a
petition for execution in India within a period of 3 years from the
finalisation of the execution proceedings in the *cause country*.

44. In view of the discussion above we dismiss the appeal and
uphold the orders of both the Courts below, though for different reasons. C
No order as to costs. Pending applications(s), if any, shall stand(s) disposed
of.

Ankit Gyan

Appeal dismissed.

