

ENFORCEMENT AND VALIDITY OF FOREIGN JUDGMENTS - DECREES IN INDIA

By

YAMIREDDY RAJEEV

Advocate, Hyderabad

Introduction:

In this new Era of globalization, Indian legal system is often appreciated for the importance it gives to enforcement of foreign decrees and judgment. Foreign legal materials are now easily available due to communication and technological development. Foreign judgments may be recognized based on bilateral or multilateral treaties or conventions or other International Instruments. The “recognition” of a foreign judgment occurs when the Court of one country accepts a judicial decision made by the Courts of another “foreign” country, and issues a judgment in substantially identical terms without rehearing the substance of the original lawsuit. Recognition of judgment will be denied if the judgment is substantively incompatible with basic fundamental legal principles in the recognizing country.

A Court situated outside India which is not under the authority of the Central Government is a foreign Court and a judgment by such Court is a foreign judgment. Judgments by Court in foreign countries like US, UK, France or German are foreign judgments. The CPC (Sections 13 and 14) provide for *res judicata* when referring to foreign judgments which embodies the principle of Private International Law. The same is that a foreign judgment by a Court of competent jurisdiction is enforceable in the Courts of India and operates as *res judicata* with the exception of the situations of Section 13. Section 13 of the Code of Civil Procedure provides for when a foreign judgment is not conclusive. A foreign judgment though, is

only valid between parties to the judgment and not third parties.

Object:

Indian legal system is based on common law legal system. The Constitution of India is inspired from laws and statute of other countries, as many provisions of Indian Constitution has been borrowed from the Statutes of other countries. Fundamental Rights from the U.S. Bill of Rights, DPSP from Ireland *etc.* Therefore, it is necessary that Indian Judiciary enforce such foreign decrees and judgments in India which is in consonance with the basic fundamental rules and laws in force in India. The Indian Judiciary has given various guidelines and judgment which are greatly inspired by laws of other countries.

The Indian Code of Civil Procedure, 1908 lays down the procedure for enforcement of foreign judgments and decrees in India, had described as below;

(a) *Section 2(5) “foreign Court”* means a Court situate outside India and not established or continued by the authority of the Central Government.

(b) *Section 2(6) “foreign judgment”* means the judgment of a foreign Court.

Sections 13, 14 and 44-A of the C.P.C., 1908:

Section 13 of the Code of Civil Procedure, 1908 provides for the conditions when a foreign judgment is conclusive between the parties except :

- (a) When the foreign judgment is not delivered by a Court of competent jurisdiction;
- (b) When the judgment is not delivered based upon merit;
- (c) When the proceedings are *prima facie* incorrect or a law prevalent in India is refused to be applied;
- (d) When the proceedings were in contravention of the principles of natural justice;
- (e) When the judgment arises out of fraud;
- (f) When the same breaches a law in force in India.

Section 14 of the C.P.C., 1908

Section 14 of the Code of Civil Procedure provides for the presumptions as to foreign judgments. The Court presumes as to a document purporting to be a certified copy of a foreign judgment that the same was delivered by a Court of competent jurisdiction unless there is a proof of the contrary.

Execution Proceedings of Foreign Judgment:

A foreign judgment may be enforced by proceedings in execution in certain specified cases mentioned in Section 44-A of the CPC.

Section 44-A – 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 India as if it had been passed by the District Court.
- (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.

- (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.

Explanation-I: “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.

Explanation-II: “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 penalties, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.

The List of the Reciprocating Territories as per the Provisions of Section 44-A of the Code of Civil Procedure, 1908

The List of Reciprocating Territories under the Civil Laws in India are *United Kingdom, Singapore, Bangladesh, UAE, Malaysia, Trinidad & Tobago, New Zealand, the Cook Islands (including Niue)* and the Trust

Territories of Western Samoa, Hong Kong, Papua and New Guinea, Fiji, *Aden Raj Rajendra Sardar Maloji Marsingh Rao Shitole v. Shankar Saran and others*, Supreme Court held that a foreign judgment which does not arise from the order of a Superior Court of a reciprocating territory cannot be executed in India. It ruled that a fresh suit will have to be filed in India on the basis of the foreign judgment.

Therefore, under Section 44-A of the CPC, a decree or judgment of any of the Superior Courts of any reciprocating territory are executable as a decree or judgment passed by the domestic Court. The judgment, once declared, will be executed in accordance with Section 51 of the Code. Thereafter, the Court may order measures such as attachment and sale of property or attachment without sale, and in some cases arrest in enforcement of a decree.

Judgment or Decrees from non-reciprocating territories:

Where a judgment or decree is not of a Superior Court of a reciprocating territory, a suit has to be filed in a Court of competent jurisdiction in India on that foreign judgment or on the original cause of action or both.

He cannot simply execute such a foreign decree. He can only execute the resulting domestic decree. To obtain that decree, he must show that the foreign decree, if he sues on it, satisfies the tests of Section 13 of the CPC and further, a suit on a foreign judgment/decreed must be filed within a period of three years from the date of the judgment/decreed.

Foreign Award:

An award passed by foreign Arbitrator is enforceable in a country where it was made and can also be enforced in India.

Courts may refer to CPC or any other statute while considering the procedure to be followed for enforcement of foreign awards under Foreign Awards (Recognition and Enforcement) Act (45 of 1961).

Effects and Enforcement of Foreign Judgments - Limitation period

A foreign judgment is conclusive for any matter adjudicated between the parties. Such judgment is conclusive and would create *res judicata* between the same parties or between parties under whom they or any of the claims.

As per the provisions of the Code, foreign judgments from reciprocating territories are enforceable in India in the same manner as the decrees passed by Indian Courts. The Limitation Act, 1963 prescribes the time limit for execution of a foreign decree and for filing of a suit in the case of judgment passed by foreign Court. Three years, commencing from the date of the decree or where a date is fixed for performance; in case of a decree granting a mandatory injunction; and Twelve years for execution of any other decree commencing from the date when the decree becomes enforceable or where the decree directs any payment of money or the delivery of any property to be made at a certain date, when default in making the payment or delivery in respect of which execution is sought, takes place.

A judgment obtained from a non-reciprocating territory can be enforced by filing a new suit in an Indian Court for which a limitation period of 3 years has been specified under the Limitation Act, 1963 commencing from the date of the said judgment passed by foreign Court.

Conflict between Indian Judgment & Foreign Judgment

The principle of *res judicata* embodied in the Code prohibits a Court of competent

jurisdiction from trying a suit on a matter that has been substantially decided in a prior suit between the same parties. Therefore, a decree or judgment passed by a Superior Court of a foreign country cannot be enforced in India if it contradicts an earlier conclusive judgment passed by a competent Court in a suit between the same parties. A foreign judgment passed by a Court of a non-reciprocating country can only be enforced by filing a new suit in India where the foreign decree is merely a piece of evidence with persuasive value. Therefore, the judgment debtor can raise the claim of *res judicata* and stay the suit at the preliminary stage.

Section 45 of the Code of Civil Procedure, 1908

So much of the foregoing sections of this part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a established by the authority of the Central Government (outside India) to which the State Government has by notification in the Official Gazette declared this section to apply.

Conclusion:

Where a judgment or a decree is passed by a foreign Court against an Indian defendant, the judgment or decree

may not be enforceable against him due to the operation of Section 13 of CPC. It can be seen that the plaintiff has to come to the Indian Courts to either get the foreign judgment executed or enforced in India under Section 44-A or file a fresh suit in Indian Courts upon the foreign judgment for its enforcement. Therefore by getting a decree in the foreign Court, the plaintiff only avoids the inconvenience of leading evidence in the Indian Courts but runs a much bigger risk under Section 13. Therefore, it is advisable for a foreign plaintiff to institute claims in India itself where the defendant is in India as generally international transactions involve more of documentary evidence and that comparatively leading of evidence may not be that inconvenient, it may be advisable to avoid the risk under Section 13 and file claims in India itself.

Hence, we can conclude that a judgment of foreign Court creates estoppel or *res judicata* between same parties, provided such judgment is not subject to attack under any of the clauses (a) to (f) of Section 13 of the Civil Procedure Code. If any claim is made by any party and subsequently abandoned at the trial of a suit and if the decree or judgment in that suit implies that claim has not met with acceptance at the hands of the Court, then the Court must be deemed to have directly adjudicated against it.