

LEGALITY OF FOREIGN JUDGEMENT IN INDIA

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ABSTRACT

This article aims to study the legality and enforceability of foreign judgement and decrees passed by the foreign courts and objective behind section 13 and 14 of the Code of Civil Procedure, 1908. The article also deals with the conditions under which a foreign judgement can act as a res judicata¹.

Since the Constitution of India has been inspired from the laws and statutes of various countries, for example, the fundamental rights from U.S, Directive principles of state policy from Ireland, etc, therefore it becomes 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 term “Decree” has been defined under section 2(2) of The Code of Civil Procedure, 1908 (hereinafter referred to as CPC) as the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include—

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

The term “Judgement” has been defined under section 2(9) of CPC as the statement given by the Judge of the grounds of a decree or order. The court after hearing the case shall pronounce the judgement in an open court either at once or as may be practicable and when the judgement

is to be pronounced on some future day, the court shall fix a day for that purpose of which a due notice shall be given to the parties of the suit or their pleaders.ⁱⁱ

Section 2(6) of CPC defines “Foreign judgement” as a judgement of a foreign court. A foreign court is a court situated outside India and not established or continued by the authority of the Central Government.ⁱⁱⁱ

ENFORCEMENT OF FOREIGN JUDGEMENT IN INDIA

Indian law in consonance with Private International Law provides for the enforcement of judgements passed by courts of territories outside India through relevant provisions under the Code of Civil Procedure, 1908. In Private International Law, unless a foreign court has jurisdiction in the international sense, a judgment delivered by that court would not be recognized in India. The three main sources for the enforcement of foreign judgement in India are:

1. **Section 44-A CPC^{iv}**: a judgement handed over by any of the superior courts of the reciprocating territory can be implemented in India as if it was a judgement or a decree passes by the District Court in India. The term “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. In the case of **Moloji Nar Singh Rao vs Shankar Saran^v** 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.

In the case of **Roshanlal v. R.B. Mohan Singh^{vi}**, it was held that 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 such foreign judgment. The general principle of law is that any decision of a foreign court, tribunal or any other quasi-judicial authority is not enforceable in a country unless such decision is embodied in a decree of a court of that country. In such a suit, the court cannot go into the merits of the original claim and it shall be conclusive as to any matter thereby directly adjudicated

between the same parties. Such a suit must be filed within a period of 3 years^{vii} from the date of judgment

2. **Treaties signed with the other countries** : in regard to the recognition and enforcement of foreign judgement to which India is a party. Whenever any such treaty is entered into with any country, that country is declared a reciprocating territory by the Indian government by way of a notification.
3. **Judicial precedents**: In the landmark case of **Moloji Nar Singh Rao v Shankar Saran**^{viii}, it was held that a foreign judgment not emanating from a superior court of a reciprocating territory cannot be executed in India without the filing of a new suit in which the said judgment has only evidentiary value.

BINDING NATURE OF FOREIGN JUDGEMENT

Section 13^{ix} of CPC embodies the principle of res judicata in foreign judgments and also embodies the principle of Private International law that a judgment delivered by a foreign court of competent jurisdiction can be executed and enforced in India. One of the fundamental requirements of recognition is that a foreign judgment must not be inconclusive under the Code. Recognition is a precondition for enforcement of foreign judgments, which may be accorded on the basis of international treaties with regard to recognition and enforcement of foreign judgments. Recognition involves acceptance of a judicial decision by courts of a foreign jurisdiction in materially identical terms without rehearing the substance of the original lawsuit.

Section 13 states that a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) **where it has not been pronounced by a Court of competent jurisdiction**: it is the basic principle of the legal system that the judgement must be pronounced by a competent court, in

case it has not been pronounced by a court of competent jurisdiction, then it will be declared as null and void.

(b) **where it has not been given on the merits of the case:** for a judgement to be given on merits it is necessary that the judge must have taken into consideration all the evidences produced before him and without any biasness has decided the case.

(c) **where it appears on the face of the proceedings to be founded on an incorrect view of international law:** when a judgement passed by a foreign court is based upon an incorrect legal view or in defiance of Indian laws where such laws are applicable, it is not conclusive and the matter adjudicated therein is not enforceable in India.

(d) **where the proceedings in which the judgment was obtained are opposed to natural justice:** the term “natural justice” under the sub-section has been used in respect of the judicial procedure. In order for a foreign judgement to be conclusive, it is necessary that it should have adhered to the correct judicial process.

(e) **where it has been obtained by fraud:** in the case of **A.V. Pappaya Sastry v. Government of Andhra Pradesh**^x, the Supreme Court held that judgement, decree or order obtained by practicing fraud on the court or authority is nullity and non est in the eyes of law.

(f) **where it sustains a claim founded on a breach of any law in force in India:** so as to ensure that no foreign judgement offends the public policy of our country.

Before enforcing a foreign judgment or decree, the party enforcing it must ensure that the foreign judgment or decree must not fall under these 6 cases but in case the foreign judgment or decree falls under any of these tests, it will not be regarded as conclusive and hence will not be enforceable in India. In the case of **Satya vs. Teja Singh**^{xi}, it was held that if the judgement falls under any of the clauses mentioned under section 13, then it will cease to be conclusive as to any matter thereby adjudicated upon and it will be open to collateral attacks on the grounds mentioned in the section. Similarly, in the landmark case of **Ramanathan Chettyar and Another v Kalimuthu Pillay and Another**^{xii}, it was held that the foreign court is considered to have competent jurisdiction in the following cases:

- a) where the defendant is a subject of the country in which the judgment was passed;

- b) where the defendant is a resident of the country in which the action was commenced;
- c) where the defendant has in a previous case filed a suit in the same forum;
- d) where the defendant has voluntarily appeared; or
- e) where the defendant has contracted to submit itself to the jurisdiction of the foreign court.

ENFORCEMENT OF FOREIGN JUDGEMENT AGAINST A THIRD PARTY

A foreign judgment or decree will be enforced only against the party against which it has been rendered. In general, a foreign judgment is enforceable only against the parties to which it is addressed or any parties mentioned in the judgment against which it may be enforced apart from the contesting parties. Therefore, a foreign judgement cannot be enforced against a third party.

PRESUMPTION AS TO FOREIGN JUDGEMENT

Section 14^{xiii} CPC states that the Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

In **Narasimha Rao v. Venkata Laxmi**^{xiv}, the appellant Narasimha married the respondent Venkata in Tirupati, India, in 1975, in compliance with Hindu law. The couple last settled in New Orleans together and then the appellant moved to the USA. Later, in 1978, the appellant filed a petition for the dissolution of marriage in Missouri, USA, and secured an irreversible breakup of marriage decree by legally meeting the condition of 90 days of residency in Missouri, USA. The wife had made it known that she would not consent to the Missouri Court's jurisdiction. Respondent lodged a criminal lawsuit against the appellant for bigamy after he married other couples. In light of the international court's decree for the termination of

marriage, the learned Magistrate discharged the appellant. However, in the appeal, the High Court changed the order on the basis that the Photostat copy of the declaration was not permissible for proof and, accordingly, the petitioner lodged a request for dismissal well before Hon'ble Supreme Court against both the order of the High Court.

The international court's jurisdiction, as well as the grounds on which relief is given, must be consistent with the matrimonial rule that regulates the parties' union. However, in a situation where the husband applied for divorce in a foreign country, the Court made the following exceptions:

1. The wife must be domiciled and resident of that foreign land and the foreign court should decide the case based on the Hindu Law;
2. The wife voluntarily attends and contests the claims in the court proceedings as per Hindu Law;
3. The wife consents to grant the divorce.

Thus, on the grounds of the aforementioned provisions, the Hon'ble Court rejected the application upon this basis that the authority of the forum, and also the condition upon which divorce decree was given, is not in conformity with the Hindu law under which applicants were married and also that the appellant had not applied to the court's jurisdiction or acceded to its enactment.

CONCLUSION

The judgment of a foreign court is enforced on the principle that where a court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim. The rules of private international law of each State must in the very nature of things differ, but by the comity of nations certain rules are recognized as common to civilized jurisdictions. A judgement given by a foreign court can act as a res judicata between the same parties on the condition that such such judgement do not fall under the exceptions mentioned under section 13 (a) – (f) of the Code of Civil Procedure, 1908. 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. The recognition of foreign judgement is accorded not as an act of courtesy but on consideration of basic principle of justice, equity and good conscience. An awareness of foreign law in the parallel jurisdiction would act as a useful guideline for the determination of our notions of justice and public policy.

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ENDNOTES

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- ⁱ Section 11 Code of Civil Procedure, 1908
ⁱⁱ Order 20 Rule 01 CPC 1908: Judgement when pronounced
ⁱⁱⁱ Section 2(5) CPC 1908: Foreign court
^{iv} Execution of decrees passed by the courts in reciprocating territory
^v AIR 1962 SC 1737
^{vi} (1975)4 SCC 628: AIR 1975 SC 824
^{vii} Article 101, Limitation Act, 1963
^{viii} AIR 1955 All 490
^{ix} When foreign judgement not conclusive
^x (2007) 4 SCC 221
^{xi} AIR 1975 SC 105
^{xii} ILR (1914) 37 Mad 163
^{xiii} Presumption as to foreign judgement
^{xiv} (1999) 3 SCC 451