

ENFORCEMENT OF FOREIGN DECREES AND JUDGMENT

Written by *Shankar Luthra*

Student, 5th Year BA LLB, Jindal Global Law University

ABSTRACT

In this new Era of globalization, India poised as a one of the major international and global player in the world which enhances the importance of law concerning enforcement of foreign judgments in India. Access to foreign legal matters 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.

India has adopted Common law judicial 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. Like Fundamental Rights from 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 country. One of the recent example is Triple Talaq which has been declared unconstitutional by SC, In recognizing freedom of the press, the Court relied on the U.S. Supreme Court’s decision in *Kovacs v. Cooper*, In upholding the death sentence, the Supreme Court relied on the U.S. cases of *Furman v. Georgia*, *Arnold v. Georgia*, and *Proffitt v.*

Florida. Cases where conflict of laws arises, judges do the comparative study of laws of various countries to reach to a fruitful conclusion.

This Article aims to study in detail the enforceability of foreign Judgments & decrees passed by foreign court and the nature and scope of Sec. 13, Sec 14, Sec 44-A of the Civil Procedure Code, 1908. The exceptions of Sec. 13 has been dealt separately in detail. This paper discusses various decisions of the Supreme Court, High Courts and other Courts of India, and some propositions are also discussed, so that the decisions can be rightly appreciated.

CIVIL PROCEDURE CODE, 1908

The Indian Code of Civil Procedure, 1908 (CPC) lays down the procedure for enforcement of foreign judgments and decrees in India. CPC, 1908 had defined the following as-

- **Sec 2(5) “foreign Court”** means a Court situate outside India and not established or continued by the authority of the Central Government¹.
- **Sec 2(6) “foreign judgment”** means the judgment of a foreign Court.

Nature and Scope of Foreign Judgments

Sec 13 embodies the principle of *res judicata* in foreign judgments. It 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.

Object of Recognizing Foreign Judgments

The judgment of foreign court is enforced on the principle that where a foreign court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim in the country where the judgment needed to be enforced. The rules of private international law of each state differs in many respect, but by the comity of nations certain rules are recognized as common to civilized Jurisdictions. Through part of the judicial system of each state these common rules have been adopted to adjudicate upon disputes involving a foreign element and to enforce judgments of foreign courts, or as a result of International conventions². Such a recognition is accorded not as an act of courtesy but on consideration of basic principle of justice, equity and good conscience³. An awareness of foreign Law in the parallel jurisdiction would be a useful guideline in determining our notions of justice and public policy. We are a Sovereign Nation within our territory but “ it is not derogation of sovereignty to take accounts of foreign law”.

¹ Code of Civil Procedure, Twenty Sixth Edition, Eastern Book Company, 2014, Pg 2,3.

² R. Viswanathan v. Rukhn-ul-Mulk Syed Abdul, AIR 1963 SC 1 at pp. 14-15: (1963)3 SCR 22

³ Satya v. Teja Singh, (1975) 1 SCC 120: AIR 1975 SC 105

“We are not provincial as to say that every solution of the problem is wrong because we deal with it otherwise at home”⁴.

Therefore, we shall not brush aside foreign judicial process unless doing so, “would violate some fundamental principle of justice & deep rooted traditions of common weal”.

Jurisdiction of Foreign Courts

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 India⁵. But it considers only the territorial competence of court over the subject-matter and defendant. Its competence or jurisdiction in any other sense is not regarded as material by the court in this country.

Presumption as to foreign judgments

Section 14 states the presumption that an Indian court takes when a document supposing to be a certified copy of a foreign judgment is presented before it. The Indian Courts presume that a foreign Court of competent jurisdiction pronounced the judgment, unless the contrary appears on the record, but by proving want of jurisdiction may overrule such presumption.

Sec14. Presumption as to foreign judgments.- *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 to competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction⁶.*

Conclusiveness of Foreign Judgments

Section 13 lays down the basic fundamental rules, which should not be violated by any foreign court in passing a decree or judgment. The decree or judgment of foreign court will be conclusive except where it comes under any of the clauses (a) to (f) of Sec 13.

⁴ Cardozo, J. in *Loucks v. Standard oil Co. of New York*, (1918) 224 NY 99 at p.111.

⁵ *Sankaran Govindan v. Lakshmi Bharathi*, (1975) 3 SCC 351 at p.368: AIR 1974 SC 1764 at p. 1766.

⁶ Code of Civil Procedure, Twenty Sixth Edition, Eastern Book Company, 2014, Pg.10

13. When foreign judgment not conclusive⁷- *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;*
- (b) *where it has not been given on the merits of the case;*
- (c) *where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable;*
- (d) *where the proceedings in which the judgment was obtained are opposed to natural justice;*
- (e) *where it has been obtained by fraud;*
- (f) *where it sustains a claim founded on a breach of any law in force in India.*

In **Brijlal Ramjidas v. Govindram Gordhandas Seksaria**⁸, SC held that Sec 13 speaks not only of “**Judgment**” but “**any matter thereby directly adjudicated upon**”. The word ‘any’ clearly shows that all the adjudicative parts of the judgment are equally conclusive.

Foreign Judgments when cannot be Enforced in India

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. If the foreign judgment or decree falls under any of these tests, it will not be regarded as conclusive and hence not enforceable in India. Under Sec 13, there are six cases when a foreign judgment shall not be conclusive:

(a) Foreign Judgment not by a competent court

It is a basic fundamental principle of law that the judgment or order passed by the court which has no jurisdiction is void. Thus, a judgment of a foreign court to be conclusive between the parties must be a judgment pronounced by a court of competent

⁷ Code of Civil Procedure, Twenty Sixth Edition, Eastern Book Company, 2014, Pg.9

⁸ Brijlal Ramjidas v. Govindram Gordhandas Seksaria, (1946-47)74 IA 203:AIR 1947PC 192 (194)

jurisdiction. Such judgment must be by a court competent both by law of the state which has constituted it and in an international sense and it must have directly adjudicated upon the matter which is pleaded as *Res judicata*.

In the case of **R.M.V. Vellachi Achi v. R.M.A. Ramanathan Chettiar**⁹, it was alleged by the respondent that since he was not a subject of the foreign country, and that he had not submitted to the jurisdiction of the Foreign Court (Singapore Court), the decree could not be executed in India. The Appellant, in defense of this argument, stated that the Respondent was a partner of a firm which was doing business in Singapore and had instituted various suits in the Singapore Courts. Therefore, the Respondent had accepted the Singapore Courts jurisdiction. The Court held that it was the firm which had accepted the jurisdiction of the foreign Court and the Respondent, in an individual capacity, had not accepted the jurisdiction. Thus, High Court held that the decree against the Respondent was not executable.

PROPOSITION

Under Section 13(a) of CPC the following proposition may be laid:

In case of actions-in-personam, a Foreign Court may pass an order or judgment against an Indian defendant, who is served with the summons but he remain ex parte. But it may be enforceable against such Indian defendant, by fulfilling any of the following conditions:

- (a) If the person is a subject of the foreign country in which the judgment or decree has been obtained against him on prior occasions.*
- (b) If the parson is a resident in foreign country when the action is commenced.*
- (c) If a person selects the foreign Court for taking action in the capacity of a plaintiff, in which he is sued later*
- (d) If the party on summons voluntarily appears before the foreign court*
- (e) If by an agreement a person has contracted to submit himself to the Court in which the judgment is obtained.*

⁹ **R.M.V. Vellachi Achi v. R.M.A. Ramanathan Chettiar**, AIR 1973 Mad. 141

(b) Foreign Judgments not on Merits

In order a foreign judgment to operate as *Res Judicata*, it must have been given on merits of the case¹⁰. A judgment is said to have been given on merits when after taking evidence and after applying his mind regarding the truth or falsity of case.

The Actual test for deciding whether the judgment has been given on merits or not, is to see whether it was merely passed as a matter of course, or by way of penalty of any conduct of the defendant, or is based upon a consideration of the truth or falsity of the plaintiff's claim.

In the case of **Gurdas Mann v. Mohinder Singh Brar**¹¹, the *Punjab & Harayana High Court* held that an *exparte* judgment and decree which did not show that the plaintiff had led evidence to prove his claim before the Court, was not executable under S. 13(b) of the CPC since it was not passed on the merits of the claim.

PROPOSITION

Under Section 13(b) of CPC the following proposition may be laid:

A judgment or decree passed by a Foreign Court against an Indian defendant, who has remain ex-parte, may not be enforceable against him, unless it can be shown that the said judgment was passed after investigation into the plaintiff's claim.

(c) Foreign Judgments against International or Indian Law

A Judgment which is contrary to the basic fundamental rules of International law or a refusal to recognize the law of India where such law is applicable is not conclusive. Where a suit instituted in England on the basis of contract made in India, the English court erroneously applied English law, Thus, the judgment of the court is covered by this clause as the general principle of Private International Law is that the rights and

¹⁰ Narasimha Rao v. Venkata Lakshmi, (1991)3 SCC 451.

¹¹ Gurdas Mann v. Mohinder Singh Brar AIR 1993 P&H 92.

liabilities of parties to a contract are governed by the place where the contract is made (*lex loci contractus*).¹²

In the case of **I & G Investment Trust v. Raja of Khalikote**¹³, a suit was filed in the English Jurisdiction to avoid the consequences of the Orissa Money Lenders Act. The Court held that the judgment was passed on an incorrect view of the International law. The Court further observed that, although the judgment was based on the averment in the plaint that the Indian law did not apply, however there was no “refusal” to recognise the local laws by the Court.¹⁴

PROPOSITION

Under Section 13(c) of CPC the following proposition may be laid:

- (i) A judgment passed by a foreign Court upon a claim for immovable property, situated in the Indian Territory may not be enforceable since it violates International Law.
- (ii) A judgment passed by the foreign Court, where before a contrary Indian law had been shown, but the Court had refused to recognize such law, then that Judgment or decree may not be enforceable, except where the proper law of contract is the foreign law.

(d) Foreign Judgments opposed to Natural Justice

It is the essence of a judgment of court that it must be obtained after due observance of the judicial procedure i.e., the court rendering the judgment must observe the minimum requirements of natural justice- it must be composed of impartial persons, who must act in a fair and justified manner, without bias, and in good faith, it must give reasonable notice to the parties to the dispute and each party should be given equal opportunity of presenting his case. A judgment which suffers from such infirmities on the part of a judge will be regarded as a nullity and the trial “*coram non iudice*”¹⁵

¹² Ibid 5

¹³ I & G Investment Trust v. Raja of Khalikote AIR 1952 Cal. 508.

¹⁴ *Ibid.* at p. 525 para 43 and 44.

¹⁵ Viswanathan v. Abdul Wajid, AIR 1961 SC 1 at pp. 24-25, 32

In the case of **Lalji Raja & Sons v. Firm Hansraj Nathuram**¹⁶, the Supreme Court held that just because the suit was decreed *ex-parte*, although the defendants were served with the summons, does not mean that the judgment was opposed to natural justice.

PROPOSITION

Under Section 13(d) of CPC the following proposition may be laid:

The judgment or decree by a foreign court must be composed of impartial persons, It must act fairly, without bias in good faith, and it must give reasonable notice to the parties to the dispute and should give each party equal opportunity of presenting his case, in order to avoid any allegation of not fulfilling the principles of natural justice in case the judgment or decree comes to the Indian court for enforcement. Unless this is done the judgment or decree passed by a foreign Court may violate the Principles of Natural Justice.

(e) Foreign judgment obtained by fraud

It is a well settled principle of Private International Law that if foreign judgments is obtained by fraud, it will not operate as *res judicata*.

It has been said “Fraud and Justice never Dwell together” (*fraus et jus nunquam cohabitant*); or “Fraud and deceit ought to benefit none” (*fraus et dolus nemini patrocinari debent*)¹⁷.

In the case of **Satya v. Teja Singh**¹⁸ the Supreme Court held that since the plaintiff had misled the foreign court as to its having jurisdiction over the matter, although it could not have had the jurisdiction, the judgment and decree was obtained by fraud and hence inconclusive.

¹⁶ Lalji Raja & Sons v. Firm Hansraj Nathuram AIR 1971 SC 974 at p. 977.

¹⁷ A.V. Papayya Sastry v. Govt. Of A.P., (2007) 4 SCC 221 at p.231: AIR 2007 SC 1546.

¹⁸ Satya v. Teja Singh AIR 1975 SC 105 at p. 117 para 50.

In **S.P. Chengalvaraya Naidu v. Jagannath**¹⁹ SC held that it is well settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law.

PROPOSITION

Under Section 13(e) of CPC the following proposition may be laid:

Where the plaintiff misleads the Foreign court and the judgment or decree is obtained on that basis, the said Judgment may not be enforceable, however if there is some error in the judgment then the Indian courts will not sit as an appeal Court to rectify the mistake or error.

(f) Foreign Judgments founded on breach of Indian Law

Where a foreign judgment is founded on breach of any law in force in India, it would not be enforced in India. Every case in Indian court must be decided in accordance with Indian law. It is implicit that the foreign law & judgments must not offend our public policy.

In China Shipping Development Co. Limited v. Lanyard Foods Limited, wherein the High Court has held that a petition for winding up of an Indian company would be maintainable on the basis of judgment of foreign Court. In this case, the foreign company delivered cargo to the Indian company in compliance with requests made by the Indian company and in the process the foreign company had incurred certain liabilities towards third parties and it had to pay certain amount in legal proceedings and therefore, in terms of the letter of indemnity issued by the respondent Indian company, the foreign company claimed the amount from the respondent Indian company, which denied its liability and therefore the foreign petitioner company initiated legal proceedings against the Indian company in the English Courts as provided in the Letter of Indemnity. The respondent Indian company did not file defence and therefore the English Court passed ex-parte order awarding certain amount in favor of the petitioner foreign company on consideration of evidence and on merits of the claim filed by the foreign company. By a notice issued under sections 433 and 434

¹⁹ Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1 : AIR 1994 SC 853

of the Companies Act, 1956, the petitioner foreign company called upon the respondent Indian company to pay the amount due under the order of the English Court. As the respondent Indian company still did not pay the amount, the Petitioner foreign company filed a petition for winding up of the Indian company. In the above circumstances since the records of the case manifestly revealed that the respondent Indian company was unable to pay its debts, the petition for winding up was admitted vide order dated 4.4.2007 under sections 433 and 434 of the Companies Act, 1956.

PROPOSITION

Under Section 13(f) of CPC the following proposition may be laid:

A judgment passed by a foreign court, which breach any law in force in India may not be enforceable, except where it is based upon a contract having a different “proper law of the contract”.

Enforcement of Foreign Judgments

A foreign Judgment which is conclusive and does not fall within sec 13 (a) to (f), may be enforced in India in either of the following ways:

(1) **By instituting execution proceedings-** A foreign Judgment may be enforced by proceedings in execution in certain specified cases mentioned in Sec 44-A of code.

Sec 44A. Execution of decrees passed by Courts in reciprocating territory²⁰-(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*

²⁰ Code of Civil Procedure, Twenty Sixth Edition, Eastern Book Company, 2014, pg22.

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 penalty, 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, is as under:

1. United Kingdom
2. Singapore
3. Bangladesh
4. UAE
5. Malaysia
6. Trinidad & Tobago
7. New Zealand
8. The Cook Islands (including Niue) and The Trust Territories of Western Samoa
9. Hong Kong

10. Papua and New Guinea

11. Fiji

12. Aden.

Moloji Nar Singh Rao vs Shankar Saran²¹ *SC 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 S. 44A 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 (if needed) in enforcement of a decree

- (2) **By instituting a suit on such foreign judgment**- 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 country²². 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 from the date of judgment²³.

In *Marine Geotechnics LLC v/s Coastal Marine Construction & Engineering Ltd.*²⁴, the Bombay High Court observed that in case of a decree from a non-reciprocating foreign territory, the decree holder should file, in a domestic

²¹ **Moloji Nar Singh Rao vs Shankar Saran** AIR 1962 SC 1737

²² *Roshanlal v. R.B. Mohan Singh*, (1975)4 SCC 628: AIR 1975 SC 824

²³ Art 101, Limitation Act, 1963.

²⁴ *Marine Geotechnics LLC v/s Coastal Marine Construction & Engineering Ltd.* 2014 (2) Bom CR 769

Indian court of competent jurisdiction, a suit on that foreign decree or on the original, underlying cause of action, or both.

However in both cases the decree has to pass the test of S. 13 CPC which specifies certain exceptions under which the foreign judgment becomes inconclusive and is therefore not executable or enforceable in India..

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)

Effect of Foreign Judgment

A foreign judgment is conclusive for any matter adjudicated upon 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 them claims.

Limitation period for Enforcement of Foreign Judgments

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.

- 3 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
- 12 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.

Foreign currency conversion rate

In a decree passed by foreign court, the amount awarded is generally in a foreign currency. Therefore, while enforcing the foreign decree in India, the amount has to be converted into Indian currency. In **Forasol vs. ONGC**²⁵ it was held that the date of the decree should be used for the calculation.

Conflict between Domestic 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.

CONCLUSION

Therefore, the above discussion of the legal issues involved in enforcement of foreign decrees in India emphasizes the need for the Indian business sectors not to treat the summons received from foreign courts casually. Rather, to contend at a later stage that the foreign decision/decreed is not based on “merit” or contrary to the provisions of the Indian Civil Procedure Code, may

²⁵ Forasol vs. ONGC 1984 AIR 241, 1984 SCR (1) 526

turn out to be too unsafe and may jeopardize the protective umbrella which the Indian companies are so accustomed to while dealing with litigations in Indian courts.

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 S. 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 S. 44A 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 S. 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 involves more of documentary evidence and that comparatively leading of evidence may not be that inconvenient, it may be advisable to avoid the risk under S. 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 Sec 13 of 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.