



ENFORCEMENT OF FOREIGN JUDGEMENTS IN INDIA

Table of Contents

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& Partners**

Contents	Page no.
INTRODUCTION	02
RECIPROCATING AND NON RECIPROCATING COUNTRIES	04
COUNTRIES WHICH HAVE BEEN OFFICIALLY RECOGNIZED AS “RECIPROCATING COUNTRIES” BY THE CENTRAL GOVERNMENT OF INDIA.	05
BASIS FOR RECOGNITION OF A FOREIGN JUDGEMENT	06
PRESUMPTIONS AS TO FOREIGN JUDGEMENT IN THE CODE	07
PROCEDURE FOR ENFORCEMENT	08
LIMITATION	10

INTRODUCTION

The growth of international commerce has necessitated the creation of efficient methods of resolution of disputes. In some situations, securing an award or a final judgement from the courts may only be a battle half-won.

In India, judgement from foreign countries may be recognized based on bilateral, multilateral treaties, conventions, or other International Instruments. Although India is not a party to the Convention on the Recognition and Enforcement of Foreign judgement in civil and commercial matters, it has executed bilateral treaties with various nations about reciprocity in enforcing judgement and decrees. The Civil Procedure Code, 1908 (hereafter referred to as 'CPC') deals with recognizing and enforcing foreign judgement and decrees in India under Section 44-A, read with Section 13 of the CPC.

A foreign judgement from any reciprocating territory can be directly enforced, just like a domestic judgement. On the other hand, the enforcement of Arbitration Awards is governed both by the Arbitration and Conciliation Act, 1996, and the CPC. The provisions laid down under Sections 13, 14, and 44-A of the CPC provide an efficient mechanism for enforcing foreign judgement.

"Foreign Court"

The CPC defines the term in Section 2(5) as:

"Foreign court" means a court situated outside India and not established or continued by the authority of the Central Government.

This definition is significant in the context of civil litigation and matters related to jurisdiction. The CPC contains provisions regarding the recognition and enforcement of judgement or orders passed by foreign courts in India. These provisions outline the conditions and procedures under which judgement from foreign courts can be recognized and enforced within the Indian legal system.

"Foreign Judgement"

The CPC defines the term in Section 2(6) as:

"Foreign judgement" means the judgement of a foreign court.

The recognition and enforcement of foreign judgement in India are governed by specific provisions of the CPC. These provisions outline the conditions under which a foreign judgement can be recognized and enforced within the Indian legal framework. Additionally, certain criteria must be satisfied to ensure the legitimacy and enforceability of such judgement.



RECIPROCATING AND NON-RECIPROCATING COUNTRIES

CPC does not lay down types of foreign judgement but it categorizes them as judgement from reciprocating or from non-reciprocating countries, depending on the territory involved.

Reciprocating Territory

“Reciprocating territory” means any country or territory outside India that the central government may, by notification in the official gazette, declare to be a reciprocating territory for Section 44A of the Civil Procedure Code.

Non- Reciprocating Territory

“Non-reciprocating territory” would mean any other country other than a reciprocating territory.



COUNTRIES WHICH HAVE BEEN OFFICIALLY RECOGNIZED AS “RECIPROCATING COUNTRIES” BY THE CENTRAL GOVERNMENT OF INDIA INCLUDE :-

- Aden;
- Bangladesh;
- Malaysia;
- Canada;
- Burma;
- Fiji Colony;
- Hong Kong;
- New Zealand, Cook Islands and Western Samoa;
- Papua New Guinea;
- Republic of Singapore; Trinidad and Tobago;
- UAE;
- United Kingdom of Great Britain;
- Northern Ireland.

BASIS FOR RECOGNITION OF A FOREIGN JUDGEMENT

Section 13 of CPC lays down the fundamental rules that should not be violated by any foreign court in passing a decree or judgement. The decree or judgement of a foreign court must be conclusive and must not fall within any of the exceptions set out in section 13 of the CPC. A foreign judgement will not be deemed final and conclusive for enforcement in India if an appeal is pending against the judgement in the foreign court of appeal. A foreign court should not violate any fundamental rules, under section 13, while passing a decree or judgement. The decree or judgement of a foreign court will be conclusive as per section 13 unless it falls within any of the clauses of the section. It says that a foreign judgement 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 to litigate under the same title except in the following cases –

- Where it has not been pronounced by a court of competent jurisdiction.
- Where it has not been given on the merits of the case.
- 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.
- Where the proceedings in which the judgement was obtained are opposed to natural justice.
- Where it has been obtained by fraud and
- Where it sustains a claim founded on a breach of any law in force in India.

In case the foreign judgement 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 *Brijal Ramjidas v. Govindram Gordhandas Seksaria* [(1943) 45 BOMLR 358], the Supreme Court held that section 13 speaks not only of judgement but any matter thereby directly adjudicated upon.

In *Duggamma v Ganeshayya* [AIR 1965 Kant 97], the Karnataka High Court held that the rule on the conclusiveness of a foreign judgement applies only to matters directly adjudicated upon. Manifestly, therefore, every issue heard and finally decided by a foreign court is not conclusive between the parties.

PRESUMPTIONS AS TO FOREIGN JUDGEMENT IN THE CODE



Section 14 of the CPC states that, if a certified copy of a judgement is produced, it is presumed that it is tried by a court with competent jurisdiction, unless proved contrary. The section says as:

Section 14 - "The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgement, that such judgement 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 jurisdiction."

Section 14 establishes a legal presumption regarding the jurisdiction of a foreign court when a certified copy of a foreign judgement is presented in an Indian court. According to this section, if a document is produced that appears to be a certified copy of a foreign judgement, the Indian court will presume that the foreign judgement was pronounced by a court with competent jurisdiction.

PROCEDURE FOR ENFORCEMENT

In India, a judgement or decree from a foreign court, which is conclusive under section 13 of CPC and does not fall within its clauses (a to f), can be enforced in either of the following ways:

For Judgement From Reciprocating Countries By Instituting Execution Proceedings

Under section 44-A of the CPC, a decree or judgement of any of the superior courts of any reciprocating territory is executable as a decree or judgement passed by the domestic court. The judgement will be then executed in accordance with section 51 of the CPC for enforcement of a decree.

For Judgement From Non-Reciprocating Countries By Instituting a Suit on Such Foreign Judgement

A suit must be filed in a court of competent jurisdiction in India for enforcement of a foreign judgement or decree which is passed by a superior court of a reciprocating territory. As per the general principles of law, 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 such foreign country. The court will not go into the merits of the original claim and it shall be conclusive as to any matter thereby directly adjudicated between the same parties.

The limitation for filing such a suit is 3 years from the date of foreign judgement.

Execution Proceedings

The various stages in an execution proceeding instituted in India in order to enforce a decree under Section 44A of the Code of Civil Procedure are as follows:

- The decree holder has to file an application for execution of the decree before the competent court of jurisdiction.
- The competent court will then issue notice to the person against whom execution is sought, requiring it to show cause as to why the decree should not be executed.
- If the person against whom the decree is to be executed, does not appear or does not show cause, the court will recognise and enforce the foreign decree as if it were a judgement of the Indian court and will allow the decree holder to execute the judgement against the assets of the judgement debtor.
- The decree holder can apply to the court to provide directions to the judgement debtor, instructing it to disclose any assets and liabilities. If these assets are disclosed, the court will proceed with the attachment and sale of such assets.

LIMITATION

The limitation in case of judgement passed from a non-reciprocating territory would be three years from the date of judgement to file a new suit in an Indian court.

The limitation period for executing a decree passed by a foreign court from a reciprocating country in India is the limitation prescribed in the reciprocating foreign country. Limitation for execution for any other decree will commence from the date the decree becomes enforceable or from the date of default when the decree directs any payment of money or the delivery of any property to be made at a certain date. The Supreme Court in *Bank of Baroda v Kotak Mahindra Bank Limited* (Civil Appeal No. 2175 of 2020) has held that the right to file execution proceedings in India would accrue “only after the finalization of execution proceedings in the cause country”.



Time Limit

If the foreign judgement or decree is not contested, the entire process may take about one to two years. On the other hand, if enforcement of the foreign judgement or decree is contested, it could take anywhere between two and three years. However, the time taken to enforce varies from one jurisdiction to another, depending on the complexity of the case and the workload of the court.

Calculation Of Value Of The Foreign Award

Generally, the amount awarded in a foreign decree is in a foreign currency. While, executing the foreign decree in India, the said amount is converted into Indian currency but the question that raises concern is as to which date to use for calculating the conversion of the currency.

The above question was answered in the case *Forasol vs. ONGC, 1984* where it was held that the date of the decree should be used for the calculation currency conversion.

Way Further

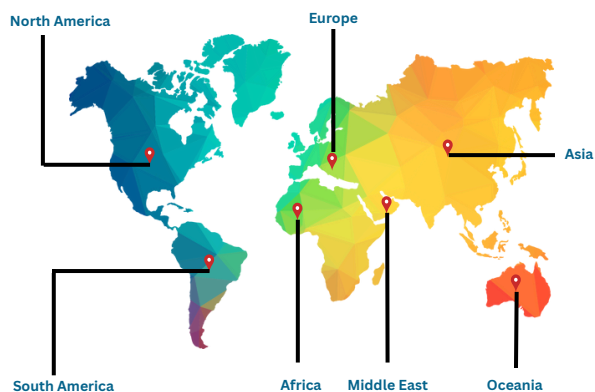
India allows the enforcement of various judgement and decrees from foreign jurisdictions to serve justice to every individual. The Indian law imposes a few conditions to be satisfied for the enforcement of a foreign judgement in order to ensure fairness and justice to both parties. Also, courts in India have always given a liberal interpretation of laws while executing a foreign judgement or decree. Therefore, it can be concluded that India has a competent legal framework and a constructive regime to enforce foreign judgement.

HOW WE CAN HELP ?



- Our team analyzes the foreign judgment under Section 13 of the CPC to ensure it complies with Indian law (not obtained by fraud, not opposed to public policy). Also, we file an execution petition in the appropriate district court.
- For non-reciprocating territories, we initiate a fresh suit demonstrating the judgment's validity.
- We draft and file legal pleadings, affidavits, and related documents and represents the clients in court, addressing objections raised under Section 13.
- We also assist in locating the judgment debtor's assets and work with enforcement agencies for seizure or liquidation.
- We provide counsel on settlement negotiations and explore alternative dispute resolution mechanisms like arbitration or mediation.

SERVING CLIENTS WORLDWIDE



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