

ENFORCEABILITY OF FOREIGN JUDGEMENTS AND FOREIGN AWARDS



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The article aims to study the enforceability of foreign Judgements/decrees and foreign award passed by a foreign court and the scope of Sec. 13 of the Civil Procedure Code, 1908.



ENFORCEMENT OF FOREIGN JUDGMENTS

With the advent of globalisation and with India poised as a major international and global player in the world economy, it is apposite to consider the law concerning enforcement of foreign judgments in India. In law, the enforcement of foreign judgments is the recognition and enforcement rendered in another ("foreign") jurisdiction. Foreign judgments may be recognized based on bilateral or multilateral treaties or understandings, or unilaterally without an express international agreement. The "recognition" of a foreign judgment occurs when the court of one country or jurisdiction accepts a judicial decision made by the courts of another "foreign" country or jurisdiction, and issues a judgment in substantially identical terms without rehearing the substance of the original lawsuit.

Recognition will be generally denied if the judgment is substantively incompatible with basic legal principles in the recognizing country. However, the Code of Civil Procedure, 1908 has defined Foreign Court and Foreign Judgements as :-

Section 2 of the CPC, 1908

(5) "foreign Court" means a Court situate outside India and not established or continued by the authority of the Central Government;]

(6) "foreign judgment" means the judgment of a foreign Court;

ENFORCING FOREIGN JUDGMENTS IN INDIA

A foreign judgment can be enforced in India in one of two ways:

1. Judgments from Courts in "reciprocating territories" can be enforced directly by filing before an Indian Court an Execution Decree.

2. Judgments from "non-reciprocating territories," such as the United States, can be enforced only by filing a law suit in an Indian Court for a Judgment based on the foreign judgment. The foreign judgment is considered evidentiary. - The time limit to file such a law suit in India is within three years of the foreign judgment.

However, "reciprocating territory" is defined in explanation 1 to Section 44A of India's Civil Procedure Code as: "Any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare as a reciprocating territory."

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.



44A. Execution of decrees passed by Courts in reciprocating territory.

(1) Where a certified copy of 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.

In case the decree pertains to a country which is not a reciprocating territory then a fresh suit will have to be filed in India on the basis of such a decree or judgment, which may be construed as a cause of action for the said suit. In the fresh suit, the said decree will be treated as another piece of evidence against the defendant.

Under Section 44A of the CPC, a decree of any of the Superior Courts of any reciprocating territory is executable as a decree passed by the domestic Court. Therefore in case the decree does not pertain to a reciprocating territory or a superior Court of a reciprocating territory, as notified by the Central Government in the Official Gazette, the decree is not directly executable in India.

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

Sections 13 and 14 enact a rule of res judicata in case of foreign judgments. These provisions embody the principle of private international law that a judgment delivered by a foreign court of competent jurisdiction can be enforced by an Indian court and will operate as res judicata between the parties thereto except in the cases

mentioned in Section 13. A foreign judgment may operate as res judicata except in the six cases specified in the section 13 and subject to the other conditions mentioned in Sec. 11 of C.P.C.



Sec. 13 of CPC, 1908:- When foreign judgment not conclusive.

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 recognise 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 ¹[India].

The awards and decrees of the Indian courts are sacrosanct. However, Section 13 of the Code of Civil Procedure 1908 (CPC) lays down that a foreign judgment shall be conclusive as to any matter directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except in few cases.

ENFORCEMENT OF FOREIGN ARBITRATION AWARDS

India's *Arbitration and Conciliation Act, 1996* provides a statutory framework for the enforcement of foreign arbitral awards given in countries which are signatories to either the 1927 Convention on the Execution of Foreign Arbitral Awards (Geneva Convention) or the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

Under Section 44 of the Indian Arbitration and Conciliation Act, 1996, a foreign arbitration a foreign award by definition means an award passed in such territory as the Central Government by notification may declare to be a territory to which the New York Convention applies.

Hence, even if a country is a signatory to the New York Convention, it does not ipso facto mean that an award passed in such country would be enforceable in India. There has to be further notification by the Central Government declaring that country to be a territory to which the New York Convention applies.

About 40 countries have been notified so far by the Indian government. The United States of America, United Kingdom, France, Germany, Japan and Singapore are among the countries notified by India.

Therefore, an Arbitration Award obtained in the USA is enforceable in India. India is a party to the the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

In the case of *Bhatia International vs Bulk Trading, AIR 2002 SC 1432*, the Supreme Court held that an arbitration award not made in a convention country will not be considered a foreign award and, as such, a separate action will have to be filed on the basis of the award.

Enforceable awards

There are several requirements for a foreign arbitral award to be enforceable under the *Arbitration and Conciliation Act*.

- (i) *Commercial transaction*
- (ii) *Written agreement*
- (iii) *Agreement must be valid*
- (iv) *Award must be unambiguous*



Enforcement and execution

The party seeking enforcement of a foreign award under the provisions of the AC Act must make an application to the court of competent jurisdiction with the following documents:

- (i) The original/duly authenticated copy of the award;
- (ii) The original/duly authenticated copy of the agreement, and
- (iii) Such evidence as may be necessary to prove that the award is a foreign award.

On fulfilling the statutory conditions mentioned above, a foreign award will be deemed a decree of the Indian court enforcing the award and thereafter will be binding for all purposes on the parties subject to the award.

The Indian Arbitration and Conciliation Act, 1996 the governing arbitration statute in India. It is based on the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985.

Section 48 of the Indian Arbitration and Conciliation Act, 1996 lays down the conditions for enforcing a foreign arbitration award in India. Grounds for refusal of enforcement are provided for under Section 48 are similar to the New York Convention.

If the court is satisfied that the foreign award is enforceable, the same shall be deemed to be a decree of the court. The Supreme Court has held that no separate application need be filed for execution of the award. A single application for enforcement of award would undergo a two-stage process. In the first stage, the enforceability of the award, having regard to the requirements of the Act (New York Convention grounds) would be determined. Once the court decides that the foreign award is enforceable, it shall proceed to take further steps for execution of the same.



CONCLUSION

In the end, I would like to conclude that Foreign Judgements/ Decrees and foreign Awards are accepted when not contradictory to principle of law laid down by Indian legislature as explained hereinbefore. However, where the judgment was not on merit and the judgment was given ex parte only on the basis of pleadings and documents of the plaintiff, the judgment being not on merit did not have force of law.

