

# Dispute Resolution Hotline

March 23, 2020

## SUPREME COURT RULES ON LIMITATION PERIOD FOR EXECUTION OF FOREIGN JUDGMENTS IN INDIA

- Section 44A of the Code of Civil Procedure 1908 (“CPC”) is an enabling provision and does not lay down or indicate the limitation period for filing such an execution petition.
- Internationally, the law of limitation has undergone a transition from being purely procedural to substantive. Therefore, the limitation law of the country where the decree was rendered (“Cause Country”), would be applied even in the country where the decree is sought to be executed (“Forum Country”).
- If a decree holder does not take any steps to execute the foreign decree in the Cause Country, he may file an execution petition in India as per the law of limitation of the Cause Country.
- If a decree holder takes steps to aid to execute a foreign decree in the Cause Country, and the decree is not fully satisfied, he may file an execution petition in India within 3 years from the ‘finalization’ of the execution proceedings in such Cause Country.

### INTRODUCTION

With the ever-increasing cross-border transactions and consequent dispute resolution, obtaining an arbitral award or a court’s decree is half the battle. What remains is the execution of the resultant award or decree – each laden with myriad issues – both substantive and procedural. One of the many concerns which may haunt the disputing parties is the limitation period for executing such award or decree.

Recently, in the case of *Bank of Baroda* (“Appellant”) v. *Kotak Mahindra Bank Ltd* (“Respondent”)<sup>1</sup>, the Supreme Court of India (“Supreme Court”) had the opportunity to ascertain the limitation period, applicable to execution of foreign judgments in India.

### FACTUAL BACKGROUND AND ISSUE FOR CONSIDERATION

A judgment (“Foreign Judgment”) was rendered by the High Court of Justice, Queen’s Bench, Divisional Commercial Court of London (“Foreign Court”) on 20 February 1995. The said judgment was a money decree in favour of the Appellant against Vysya Bank, predecessor of the Respondent bank.

After a lapse of almost 14 years, the Appellant, i.e., decree holder, filed for execution proceedings in India, i.e., Forum Country on 5 August 2009 under Section 44A<sup>2</sup> of the Code of Civil Procedure 1908 (“CPC”). Certain objections were raised against the said execution proceedings as being time-barred. Aggrieved by the decisions of the district court and High Court, the Appellant approached the Supreme Court for a determination on the following issue:

“What is the limitation for filing an application for execution of a foreign decree of a reciprocating country in India?”

### THE SUPREME COURT’S FINDINGS

Section 44A of the CPC is an enabling provision, which requires the District Court to follow the same procedure as it follows while executing an Indian decree, and does not deal with any limitation period. However, referring to Section 3<sup>3</sup> of the Limitation Act, the Supreme Court held that applications filed for execution proceedings under Section 44A of the CPC would also be subject to limitation.

#### *Law of limitation applicable to execution of foreign decrees*

The Supreme Court observed that the law of limitation was previously considered ‘procedural’ in nature. Accordingly, the law of limitation of the Forum Country was applicable to execution of foreign decrees. However, the law of limitation has recently undergone a transition from being ‘purely procedural’ to ‘substantive’ - especially when it leads to extinguishment of rights or remedies.

In this regard, the Supreme Court referred to international jurisprudence to conclude that almost all the common law countries (including UK<sup>4</sup> and several states in the USA<sup>5</sup>) have incorporated this transition by way of legislations or judicial pronouncements. The Supreme Court observed that the worldwide view appears to be that the limitation law of the Cause Country should be applied even in the Forum Country. The Supreme Court thereafter noted that as a global player, India could not be an exception in holding that the law of limitation is purely ‘procedural’.

In any event, in cases where the law of an Forum Country is silent on the limitation period for execution of a decree, the limitation period prescribed in the Cause Country would apply.

In this regard, the Supreme Court considered the following situations: -

*Situation 1: When the decree holder does not take steps for execution of the decree in the Cause Country*

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In case the decree holder does not avail the remedy to execute the decree in the Cause Country within the limitation period, it stands extinguished in the Cause Country. Consequently, the right to execute in any other country is virtually extinguished. This would also create a corresponding right in the judgment debtor to challenge the execution of the decree. In such a scenario, the decree holder would be prevented from coming the Forum Country, and pleading a new cause of action in the Forum Country or that the limitation of the Forum Country would apply.

Hence, limitation would commence from the date on which the decree was passed in the Cause Country and the period of limitation prescribed in the Cause Country would apply.

Therefore, in the given case, the limitation would commence from the date when the Foreign Judgment was passed in the UK, and the period of limitation prescribed in the UK would be applicable, i.e., 6 years<sup>6</sup> from 20 February 1995.

#### *Situation 2: When a decree holder takes steps in aid to execute the decree in the Cause Country*

In the event that execution proceedings were initiated in the Cause Country but the decree remained unsatisfied, the decree holder may consider initiating execution proceedings in the Forum Country. In this regard, the Supreme Court observed that Article 136<sup>7</sup> of the Limitation Act is applicable to decrees or orders of civil courts, and not courts of foreign jurisdictions. Therefore, applications for executing a foreign decree, which are not covered under any other provision of the Limitation Act, would be covered under the residuary provisions of the Limitation Act, i.e., a limitation period of 3 years.<sup>8</sup>

Thus, the period of limitation applicable to applications for execution proceedings in India would be 3 years after the "finalization of the execution proceedings in the Cause Country".

#### **CONCLUDING REMARKS**

Undoubtedly, this judgment is a welcome change and clarifies the misassumptions on the law of limitation for execution of foreign decrees. The Supreme Court has also gone a step further, by acknowledging the elements of substantive law within the law of limitation, thereby keeping up with international jurisprudence and previous recommendations<sup>9</sup> of the Law Commission of India.

However, the judgment lacks clarity on situations where a decree holder seeks to file parallel or concurrent proceedings in a foreign jurisdiction along with the execution proceedings in the Cause Country. In this regard, the Supreme Court has held that the right to file execution proceedings in India would accrue "*only after finalization of execution proceedings in the Cause Country*". However, the connotation of "*finalization of the execution proceedings*" remains unanswered.

#### *Applicability of the present judgment*

This judgment is applicable to decrees from 'reciprocating territories' only. The limitation period for judgments from non-reciprocating territories would significantly vary, considering that the procedure for execution of such judgments would also be different.

While determining the limitation period for execution of foreign decrees, the Supreme Court has diverted from the law of limitation governing enforcement of foreign awards in India. Considering that foreign awards are executable as decrees of Indian courts,<sup>10</sup> courts have previously held that the limitation period applicable to domestic decrees would also be applicable to such foreign awards, i.e., 12 years as per Article 136 of the Limitation Act.<sup>11</sup> However, in light of the interpretation of the Supreme Court that Article 136 of the Limitation Act is applicable only to decrees of civil courts of India, the limitation period applicable to enforcement of foreign awards may have to be re-examined.

— **Shweta Sahu, Moazzam Khan & Vyapak Desai**

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<sup>1</sup> Civil Appeal No. 2175 of 2020, Special Leave Petition (Civil) No.8123 of 2015.

<sup>2</sup> Code of Civil Procedure 1908, s 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.

Explanation 1- "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 2 – "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 to 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."

<sup>3</sup> Limitation Act 1963, s 3:

"Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

<sup>4</sup> Foreign Limitation Periods Act 1984, s 1:

"Application of foreign limitation law.

(1) Subject to the following provisions of this Act, where in any action or proceedings in a court in England and Wales and the law of any other country falls in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter—

(a) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings, subject to Sections 1A and 1B; and

(b) except where that matter falls within subsection (2) below, the law of England and Wales relating to limitation shall not so apply

(2) A matter falls within this subsection if it is a matter in the determination of which both the law of England and Wales and the law of some other country fall to be taken into account.

(3) The law of England and Wales shall determine for the purposes of any law applicable by virtue of subsection (1)(a) above whether, and the time at which, proceedings have been commenced in respect of any matter; and, accordingly, section 35 of the Limitation Act 1980 (new claims in pending proceedings) shall apply in relation to time limits applicable by virtue of subsection (1)(a) above as it applied in relation to time limits under that Act..."

<sup>5</sup> Uniform Conflict of Laws Limitation Act 1982, s 2:

"(a) Except as provided by sec 4, if a claim is substantively based:

(1) upon the law of one other state, the limitation period of that state applies; or

(2) upon the law of more than one state, the limitation period of one of those states chosen by the law of conflicts of law of this State, applies"

Uniform Conflict of Laws Limitation Act 1982, s 3:

"If the statute of limitations of another state applies to the assertion of a claim in this State, the other States' relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period, but its statutes and other rules of law governing conflict of laws do not apply"

<sup>6</sup> Limitation Act 1980, s 24

<sup>7</sup> Limitation Act 1963, Schedule art 136:

Description of suit	Period of limitation	Time from which period begins to run
For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place.

<sup>8</sup> Limitation Act 1963, Schedule, art. 137

<sup>9</sup> Law Commission of India, Transnational Litigation – Conflict of Laws – Law of Limitation (Law Com No 193, June 2005)

<sup>10</sup> *Ms. Fuerst Day Lawson Ltd v. Jindal Exports Ltd.* 2001 (6) SCC 356

<sup>11</sup> *Compania Naviera 'Sodnoc' v. Bharat Refineries Ltd.* AIR 2007 Mad 251; *Imax Corporation v. E-City Entertainment (I) Pvt. Ltd. and Ors.*, (2020) 1 AIR Bom R 82; *Caim India Ltd. & Ors v. Government of India*, O.M.P.(EFA)(COMM.) 15/2016 (Delhi High Court, pronounced on 19 February 2020)

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