



Legality Of Foreign Judgments



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The article/paper aims to study the binding nature of the foreign judgments i.e. judgments given by the courts in foreign countries and the scope and object of section 13 of C.P.C. Also the project describes the conditions under which the judgments given by any foreign court creates the rule of estoppel or res judicata.

Introduction

A foreign Court is defined as a court situate outside India and not established or continued by the authority of the Central Government. And a Foreign Judgment means a judgment of a foreign court. . In other words, a foreign judgment means adjudication by a foreign court upon a matter before it. Thus judgments delivered by courts in England, France, Germany, USA, etc. are foreign judgments.

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.

Nature And Scope Of Sec. 13, C.P.C.

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. The rules laid down in this section are rules of substantive law and not merely of procedure. The fact that the foreign judgment may fail to show that every separate issue, such as, the status of the contracting parties, or the measure of damages, was separately framed and decided, is irrelevant unless it can be shown that failure brings the case within the purview of one of the exceptions to Section 13.

Object Of Section.13 And 14

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. 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 effectuate judgments of foreign courts in certain matters, or as a result of international conventions. Such recognition is accorded not as an act of courtesy but on considerations of justice, equity and good conscience. An awareness of foreign law in a parallel jurisdiction would be a useful guideline in determining our notions of justice and public policy. We are sovereign within our territory but "it is no derogation of sovereignty to take account of foreign law."

As has been rightly observed by a great jurist: "We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home"; and we shall not brush aside foreign judicial process unless doing so "would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."

Jurisdiction To Foreign Courts

The following circumstances would give jurisdiction to foreign courts:

1. Where the person is a subject of the foreign country in which the judgment has been obtained;
2. Where he was a resident in the foreign country when the action was commenced and the summons was served on him;
3. Where the person in the character of plaintiff selects the foreign court as the forum for taking action in which forum he issued later;
4. Where the party on summons voluntarily appeared; and
5. Where by an agreement, a person has contracted to submit himself to the forum in which the judgment is obtained.

Binding Nature Of Foreign Judgments: Principles

The Code of Civil Procedure provides that a foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties pr between parties under whom they or any of them claim litigating under the same title except -

- a) Where it has not been pronounced by 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 proceeding 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 proceeding in which the judgment was obtained or 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

Foreign Judgments When Not Binding: Circumstances: Sec. 13

Under Sec. 13 of the Code, a foreign judgment is conclusive and will operate as **res judicata** between the parties there to accept in the cases mentioned therein. In other words, a foreign judgment is not conclusive as to any matter directly adjudicated upon, if one of the conditions specified in clauses (a) to (f) of section 13 is satisfied and it will then be open to a collateral attack. Dicey rightly states:

"A foreign judgment is conclusive as to any matter thereby adjudicated upon and can not be impeached for any error either

- (1) Of fact; or
- (2) Of law"

In the following six cases, a foreign judgment shall not be conclusive:

- (3) Foreign not by a competent court;
- (4) Foreign judgment not on merits;
- (5) Foreign judgment against international or Indian law;
- (6) Foreign judgment opposed to natural justice;
- (7) Foreign judgment obtained by fraud;
- (8) Foreign judgment founded on a breach of Indian law.

Foreign Judgment Not By A Competent Court

It is a fundamental principle of law that the judgment or order passed by the court, which has no jurisdiction, is null and void. Thus, a judgment of a foreign court to be conclusive between the parties must be a judgment pronounced by a court of competent jurisdiction. Such judgment must be by a court competent both by the law of 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**. But what is conclusive is the judgment, i.e. the final adjudication and not the reasons for the judgment given by the foreign court.

Thus if A sues B in a foreign court, and if the suit is dismissed, the decision will operate as a bar to a fresh suit by A in India on the same cause of action. On the other hand, if a decree is passed in favor of A by a foreign court against B and he sues B on the judgment in India, B will be precluded from putting in issue the same matters that were directly and substantially in issue in the suit and adjudicated upon by the foreign court.

The leading case on the point is **Gurdayal Singh v. Rajah of Faridkot**.

In that case, A filed a suit against B in the court of the Native State of Faridkot, claiming Rs. 60,000 alleged to have been misappropriated by B, while he was in A's service at Faridkot. B did not appear at the hearing, and an *ex parte* decree was passed against him. B was a native of another Native State Jhind. In 1869, he left Jhind and went to Faridkot to take up service under A. But in 1874, he left A's service and returned to Jhind. The present suit was filed against him in 1879; when he neither resided at Faridkot nor was he domiciled there. On these facts, on general principles of International Law, the Faridkot court had no jurisdiction to entertain a suit against B based on a mere personal claim against him. The decree passed by the Faridkot court in these circumstances was an absolute nullity. When A sued B in a court in British India, against B on the judgment of the Faridkot court, the suit was dismissed on the ground that Faridkot court has no jurisdiction to entertain the suit. The mere fact that the embezzlement took place at Faridkot, was not sufficient to give jurisdiction to the Faridkot court would have had complete jurisdiction to entertain the suit and to pass a decree against him.

Similarly, a court has no jurisdiction to pass a decree in respect of immovable property situated in a foreign State.

Foreign Judgment Not On Merits

In order to operate as **res judicata**, a foreign judgment must have been given on merits of the case. 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 the plaintiff's case, the Judge decides the case one way or the other. Thus, when the suit is dismissed for default of appearance of the plaintiff; or for non-production of the document by the plaintiff even before the written statement was filed by the defendant, or where the decree was passed in consequence of default of defendant in furnishing security, or after refusing leave to defend, such judgments are not on merits.

However, the mere fact of a decree being *ex parte* will not necessarily justify a finding that it was not on merits. The real test for deciding whether the judgment has been given on merits or not is to see whether it was merely formally passed as a matter of course, or by way of penalty for any conduct of the defendant, or is based upon a consideration of the truth or falsity of the plaintiff's claim, notwithstanding the fact that the evidence was led by him in the absence of the defendant.

Foreign Judgment Against International Or Indian Law

A judgment based upon an incorrect view of international law or a refusal to recognize the law of India where such law is applicable is not conclusive. But the mistake must be apparent on the face of the proceedings. Thus, where in a suit instituted in England on the basis of a contract made in India, the English court erroneously applied English law, the judgment of the court is covered by this clause in as much as it is a general principle of Private International Law that the rights and liabilities of the parties to a contract are governed by the place where the contract is made (**lex loci contractus**).

"When a foreign judgment is founded on a jurisdiction or on a ground not recognized by Indian law or International Law, it is a judgment which is in defiance of the law. Hence, it is not conclusive of the matter adjudicated therein and, therefore, unenforceable in this country."

Foreign Judgments Opposed To Natural Justice

It is the essence of a judgment of a court that it must be obtained after due observance on the judicial process, i.e., the court rendering the judgment must observe the minimum requirements of natural justice - it must be composed of impartial persons, act fairly, without bias, and in good faith; it must give reasonable notice to the parties to the dispute and afford each party adequate opportunity of presenting his case. A judgment, which is the result of bias or want of impartiality on the part of a judge, will be regarded as a nullity and the trial "**corum non iudice**".

Thus a judgment given without notice of the suit to the defendant or without affording a reasonable opportunity of representing his case is opposed to natural justice. Similarly, a judgment against a party not properly represented in the proceedings or where the judge was biased is contrary to natural justice and, therefore, does not operate as **res judicata**.

But the expression "natural justice" in clause (d) of Section 13 relates to the irregularities in procedure rather than to the merits of the case. A foreign judgment of a competent court, therefore, is conclusive even if it proceeds on an erroneous view of the evidence or the law, if the minimum requirements of the judicial process are assured; correctness of the judgment in law or evidence is not predicated as a condition for recognition of its conclusiveness by the municipal court. Thus, a foreign judgment is not open to attack on the ground that the law of domicile had not been properly applied in deciding the validity of adoption or that the court disagrees with the conclusion of the foreign court, if otherwise the principles of natural justice have been complied with.

Foreign Judgment Obtained By Fraud

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

Lord Denning observed: "No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud." Cheshire rightly states: "It is firmly established that a foreign judgment is impeachable for fraud in the sense that upon proof of fraud it cannot be enforced by action in England." All judgments whether pronounced by domestic or foreign courts are void if obtained by fraud, for fraud vitiates the most solemn proceeding of a court of justice.

Explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be **res judicata** and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been wrongly decided, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside if the court was imposed upon or tricked into giving the judgment.

In the leading case of **Satya v. Teja Singh**, where a husband obtained a decree of divorce against his wife from an American Court averring that he was domiciled in America. Observing that the husband was not a bonafide resident or domicile of America, and he had played fraud on a foreign court falsely representing to it incorrect jurisdictional fact, the Supreme Court held that the decree was without jurisdiction and a nullity.

Again, in **Narsimha Rao v. Venkata Kakshmi**, A husband obtained a decree of divorce against his wife B again from an American High Court on the ground that he was a resident of America. Then he remarried C. B filed a criminal complaint against A and C for bigamy. A and C filed an application for discharge. Dismissing the application, the Supreme Court held that the decree of dissolution of Marriage was without jurisdiction in as much as neither the marriage was solemnized nor the parties last resided together in America. It was, therefore, unenforceable in India.

In **Chengalvaraya Naidu v. Jagannath**, the Supreme Court stated: "It is the 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 the law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

The fraud may be either fraud on the part of the party invalidating a foreign judgment in whose favor the judgment is given

or fraud on the court pronouncing the judgment. Such fraud, however, should not be merely constructive, but must be actual fraud consisting of representations designed and intended to mislead; a mere concealment of fact is not sufficient to avoid a foreign judgment.

Foreign Judgment Founded On Breach Of Indian Law

Where a foreign judgment is founded on a breach of any law in force in India, it would not be enforced in India. The rules of Private International Law cannot be adopted mechanically and blindly. Every case, which comes before an Indian Court, must be decided in accordance with Indian law. It is implicit that the foreign law must not offend our public policy. Thus a foreign judgment for a gaming debt or on a claim, which is barred under the Law of Limitation in India, is not conclusive. Similarly, a decree for divorce passed by a foreign court cannot be confirmed by an Indian court if under the Indian law the marriage is indissoluble.

It is implicit that the foreign law and foreign judgment would not offend against our public policy.

Presumption As To Foreign Judgments: Section 14

Section 14 of the Code declares 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, or is proved. However, if for admissibility of such copy any further condition is required to be fulfilled, it can be admitted in evidence only if that condition is satisfied.

Thus, in **Narsimha Rao v. Venkata Lakshmi**, the Supreme Court held that mere production of a Photostat copy of a decree of a foreign court is not sufficient. It is required to be certified by a representative of the Central Government in America.

Submission To Jurisdiction Of Foreign Court

It is well established that one of the principles on which foreign courts are recognized to be internationally competent is voluntary submission of the party to the jurisdiction of such foreign court. The reason behind this principle is that having taken a chance of judgment in his favor by submitting to the jurisdiction of the court, it is not open to the party to turn round when the judgment is against him and to contend that the court had no jurisdiction.

Submission to jurisdiction of a foreign court may be express or implied. Whether the defendant has or has not submitted to the jurisdiction of a foreign court is a question of fact, which must be decided in the light of the facts, and circumstances of each case.

Conclusiveness Of Foreign Judgment

As stated above, a foreign judgment is conclusive and will operate as *res judicata* between the parties and privies though not strangers. It is firmly established that a foreign judgment can be examined from the point of view of competence but not of errors. In considering whether a judgment of a foreign court is conclusive, the courts in India will not require whether conclusions recorded by a foreign court are correct or findings otherwise tenable. In other words, the court cannot go into the merits of the original claim and it shall be conclusive as to any matter thereby directly adjudicated upon between the same parties subject to the exception enumerated in clauses (a) to (f) of Section 13.

Enforcement Of Foreign Judgments

A foreign judgment, which is conclusive under Section 13 of the Code, can be enforced in India in the following ways:

1. By instituting a suit on such foreign judgment,

A foreign judgment may be enforced by instituting a suit on such foreign judgment. The general principle of law is that any decision by a foreign court, tribunal or 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 upon between the same parties. Such a suit must be filed within a period of three years from the date of the judgment.

2. Execution Proceedings

A foreign judgment may also be enforced by proceedings in execution in certain specified cases mentioned in Section 44-A of the Code. The said section provides that where a certified copy of a decree if 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. When a foreign judgment is sought to be executed under Section 44-A, it will be open to the judgment-debtor to raise all objections, which would have been open to him under Section 13 if a suit had been filed on such judgment. The fact that out of six exceptions there has been due compliance with some of the exceptions is of no avail. The decree can be executed under Section 44-A only if all the conditions of Section 13 (a) to (f) are satisfied.

Foreign Awards

Principles laid down in the section do not apply- It is not open to the party, who is party to the award, to contend that the award was not given on merits of the case. Say that if the award was given against the rules of natural justice or it was fraudulently obtained, the party may not be prevented from putting forward those contentions. But it is difficult to accept the view that because on a foreign judgment it is open to a party to contend that it was not given on the merits of the case, it is equally open to a party who is resisting the suit on the award to contend that the award was not given on the merits of the case.

Only if the award given in a foreign country is reinforced by a decree of the Court of that country the courts will be bound to take notice of it but without such a decree reinforcing such award, the award must be deemed to be non-existent.

Conclusion

Thus a bare reading of section suggests that a foreign judgment would be conclusive as to any matter thereby directly adjudicated upon between the same parties. Hence we can conclude that a judgment of a foreign Court creates estoppel or res judicata between the same parties, provided such judgment is not subject to attack under any of the clauses (a) to (f) of Section 13 of the Code. If any claim is made by any party and subsequently abandoned at the trial of a suit and if the decree in that suit necessarily 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.

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