

Brief Note on the judgment dated 17th March, 2020 of the Supreme Court of India in

State Bank of Baroda v Kotak Mahindra Bank

Civil Appeal No. 2175 of 2020

Issuing Bank Vyasya Bank (now Kotak Mahindra Bank) on the request of one its customers issued a letter of credit for US \$ 1,794,258 in favour of a company in London. Bank of Baroda was the confirming bank and on the instructions of the issuing bank, on 13.10.92 Bank of Baroda made payment of USD\$ 1,742,376.41 under the letter of credit. Bank of Baroda then filed a suit against Kotak Mahindra Bank for the recovery of dues before the Commercial Courts of the England & Wales High Court. The High Court (Commercial Division) at London decreed the suit vide its judgment dated 20.02.1995 and a decree for US \$ 1,267,909.26 along with interest was passed in favour of Bank of Baroda.

After a gap of 14 years from the date of passing of decree by the High Court at London, Bank of Baroda filed an execution petition in India seeking execution of the decree in terms of section 44A read with Order 21 Rule 3 of the Civil Procedure Code for recovery of Rs. 16,43,88,187.86. The execution petition was contested by Vysya Bank (Now Kotak Mahindra Bank) mainly on the ground that the execution of the decree had not been sought within the period of limitation. The Ld. Additional City Civil & Sessions Judge Bangalore dismissed the execution petition being barred by Article 136 of Limitation Act, 1963, which provides for execution petitions to be filed within 12 years of decree being passed. Aggrieved by the dismissal, Bank of Baroda moved the Karnataka High Court, which vide its judgment dated 13.11.2014 upheld the judgment passed by the Ld. Additional City Civil & Sessions Judge, Bangalore. Bank of Baroda, moved the Supreme Court of India, challenging the concurrent findings.

Before the Supreme Court, the case of appellant Bank of Baroda was that the Limitation Act does not prescribe any period of limitation for execution of a foreign decree passed in a reciprocating country and the cause of action arises only when a petition is filed under section 44A of the CPC which provides for decree passed by a superior court of reciprocating country should be treated as a decree passed by an Indian court and a limitation of 12 years as provided for under Article 136 of Limitation Act would apply from the date of filing of execution petition. The Respondents Kotak Mahindra Bank contended that law of limitation of England would apply in this case which is 6 years. The alternative argument was that in case the Indian Limitation Act would apply then the limitation would be 12 years, as provided in article 136 and would be counted from the date of passing of decree. Following issues arose before the Supreme Court;

- a. Does Section 44A merely provide for manner of execution of foreign decrees or does it also indicate the period of limitation for filing execution proceedings for the same?
- b. What is the period of limitation for executing a decree passed by a foreign court (from a reciprocating country) in India?
- c. From which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India?

Upholding the concurrent findings arrived by the courts below, that the decree could not be enforced being barred by limitation, the Supreme Court in the judgment has held that it is the limitation of the reciprocating country where decree has been passed shall apply when the execution of the decree is sought in India. Supreme Court used the terms “cause country” meaning the country in which the decree was issued which in this case was England and “forum country” meaning the country in which the decree is sought to be executed which in this case was India. It was held that;

- a. Rejecting the contention of the appellants, it was held that the principles of delay and laches which may be applicable to writ proceedings cannot be applied to proceedings especially under the Civil Procedure Code which proceedings must be filed within the limitation provided under the Limitation Act. Concept of cause of action relates to civil suits and not to execution petitions where there is no concept of cause of action. A decree becomes enforceable the day it is passed. Therefore, and filing of an application under section 44A

being an enabling provision regarding execution of decrees, it would not create a fresh period of limitation for enforcing the decree.

- b. On the issue of period of limitation applicable, it was observed that in India Limitation Act was termed as procedural law whereas common law countries have taken a view that law of limitation cannot be treated as purely procedural law. After referring to the statutes of U.S.A & U.K etc. it was observed that the worldwide view appears to be that the law of the cause country should be applied even in forum country. Supreme Court went on to hold that limitation period for executing a decree passed by a foreign court (from a reciprocating country) in Indian will be limitation prescribed in the country where decree has been issued. However execution in India will be subject to section 13 of CPC.
 - c. On the issue of date on which the limitation would start running, it was held that limitation would start running from the date the decree was passed in the cause country and the period of limitation prescribed in the forum country would not apply. Envisaging situations, it was also held that in case decree holder does not take steps to execute the decree in the cause country within the limitation prescribed in the cause country, it cannot come to the forum country and plead that the limitation of the forum country would apply. In cases where the decree holder takes steps to execute the decree in cause country and the decree remains partly satisfied due to insufficient property or funds of the judgment debtor in the cause country, then the decree holder will have the right to apply for execution of the decree in India within 3 years of the date finalization of execution proceedings in cause country.
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Practical insight on the subject

The law laid down in this judgment applies to foreign judgments of “superior courts” of “reciprocating countries” such as Singapore, Malaysia, Hong Kong, New Zealand, U.A.E, Great Britain & Northern Ireland etc.. An application for execution of foreign decree is to be filed before a court within whose local limits either the judgment debtor resides or works for gain or where the property owned by the judgment debtor is situated. An application would be dealt with the procedure as contained in sections 44, 47 and Order 21 of Civil Procedure Code. Decree holder will have to satisfy the court dealing with an application for execution of decree from a reciprocating country that the decree is executable and meets the conditions laid down in section 13 of CPC. Execution of decree may be denied if the conditions laid down in section 13 are not met. Section 13 CPC is as follows;

Section 13. 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 recognize the law of 1 [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].

Once the court orders for execution of a foreign decree, then the powers of the court to enforce execution include, delivery of any property specifically decreed, attachment and/or sale of properties, appointment of receiver, arrest & detention

Procedure for execution of judgments issued by the courts of non-reciprocating countries is entirely different from above.

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