RES JUDICATA OF FOREIGN JUDGEMENT: EXECUTION OF FOREIGN AWARDS AND DECREES IN INDIA

Makam Ganesh Kumar, O.P Jindal Global University

ABSTRACT

This article examines the concept of Res Judicata in the context of the execution of foreign judgements and awards in India. Res Judicata is a legal doctrine that prohibits re-litigation of the same matter between the same parties. Foreign awards and decrees are subject to conditions including reciprocity, compliance with Indian law, and due process in India. The same issues cannot be litigated again in Indian courts once a foreign judgement has been executed. The Res Judicata principle promotes legal certainty and facilitates the resolution of international disputes.
Meaning of Foreign Judgements and Foreign Decree

'Foreign Judgment' refers to the decision of a 'foreign court,' defined as a court located outside of India and not established or maintained by the authority of the Central Government according to Section 2(5)\(^1\). Consequently, decisions rendered by foreign courts are foreign judgements. The term "judgment" as used in Section 2(6)\(^2\) has the English meaning rather than the meaning assigned by Section 2(9)\(^3\). This means that a "foreign judgement" must be interpreted as "an adjudication by a foreign court concerning a case before it," rather than the reasons for the order made by it. Hence, a 'foreign judgement' is a decree/order issued by a 'foreign court'.

A foreign decree is defined in Explanation II to Section 44A\(^4\) of the CPC as "any decree or judgement 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 of a fine or other penalty," but it does not include an arbitral award, even if it is enforceable as a decree or judgement\(^5\).

\(^1\) THE CODE OF CIVIL PROCEDURE, 1908, Section 2(5): “foreign Court” means a Court situate outside India and not established or continued by the authority of the Central Government

\(^2\) THE CODE OF CIVIL PROCEDURE, 1908, Section 2(6): “foreign judgment” means the judgment of a foreign Court.

\(^3\) THE CODE OF CIVIL PROCEDURE, 1908, Section 2(9) : “judgment” means the statement given by the Judge of the grounds of a decree or order;

\(^4\) THE CODE OF CIVIL PROCEDURE, 1908: 44A. Execution of decrees passed by Courts in reciprocating territory.

1) Where a certified copy of a 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 of 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.]

Conclusiveness of Foreign Judgements (Section 13)

The extent to which a foreign court's ruling can be relied upon and the significance of such rulings in the case before the Indian court if foreign decisions can serve as precedent before the Indian court and whether they are binding. In several judgments, the Supreme court has expressed its view on admissibility of foreign judgments. In the case R. Viswanathan v. Syed Abdul Wajid6 It was held that the decision of a foreign court is enforceable based on the premise that when a court of competent jurisdiction rules on a claim, there is a legal obligation to settle that claim. By their very nature, the principles of private international law of each state must differ, yet the comity of nations recognizes certain rules as common to civilized states. Common standards have been adopted as part of each state's judicial system to handle issues containing a foreign element and to implement judgements of foreign courts in particular matters, or because of international conventions. The SC in Satya v. Teja Singh7 It was observed that such a recognition is not granted out of courtesy, but rather out of respect for justice, equity, and moral conscience. We are sovereign in our land, yet it does not compromise our sovereignty to consider foreign law. Hence, a foreign decision can be referred to for the ratio put out in the given facts and circumstances of a case, but a decree of a foreign court against a nonresident foreigner is null and void.

It reflects the idea of private international law that a judgement made by a "Foreign Court" of a competent jurisdiction can be enforced by an Indian Court and will operate as res-judicata between the parties, save in the instances specified by clauses (a) through (f) of Section 138. If the judgement falls within any of clauses (a) through (f) of Section 13, it will no longer be conclusive as to the subject matter adjudicated. The judgement will thereafter be susceptible to collateral attack on the six grounds listed in Section 13. under Section 13, a foreign judgment is conclusive and will operate as res judicata between the parties except in six cases [Clauses (a) to (1) of Section 13], and of course, to so operate, the other conditions of Section 11 must

---

7 Satya v. Teja Singh, (1975) 1 SCC 120
8 THE CODE OF CIVIL PROCEDURE, 1908, 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 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;
   e) where it sustains a claim founded on a breach of any law in force in [India].
be satisfied. The Supreme court in Sardar Maloji v. Sankar Saran⁹, observed that "the rules laid down in Section 13 are rules of substantive law and not merely of procedure. It creates substantive rights which cannot be taken away by subsequent change in law." The foreign court must have directly adjudicated upon a "matter". The expression "matter" in Section 13 does not mean the subject-matter but "the right claimed." The judgment to be conclusive under Section 13 means an adjudication by a 'Foreign Court' upon the matter (the right claimed) before it, and not the reasons for the order. What is conclusive under Section 13 is the judgment (the final adjudication) and not the reasons.

The provision of Section 13 about the finality of foreign rulings operates very differently than the traditional concept of res judicata. These criteria are unquestionably based on the concept of the correctness of issued judgements. Yet, the rule of res judicata applies to all previously litigated problems between the parties that have been completely resolved. These concerns may have and should have been addressed as an attack or defense in a preceding lawsuit. Yet, the rule of the conclusiveness of foreign judgements only applied to things that were directly adjudicated. Hence, any dispute heard and decided by a "foreign court" is obviously not binding on the parties. The verdict, or the direct adjudication of an issue, is conclusive.

**Clauses (a) of Section 13: Foreign Judgement not by Competent Court:** it is the fundamental principle of law that the judgment or order passed by the court which had no jurisdiction in null and void. The supreme court in R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid It was observed that the competence of a municipal court for the application of the rules of res judicata is determined strictly by municipal law; however, the competence of a foreign tribunal must satisfy a dual test of competence, i.e., by the law of the state that created it and in an international sense. In Emanuel v. Symon¹⁰, Justice Bukley held that a foreign court is deemed of competent jurisdiction about any action in personam in the following situation:

a) Where the defendant at the time of judgment was a citizen or subject of the foreign country rendering the judgment.

b) Where the defendant at the time of commencement of the action was a resident of or domiciled in the foreign country rendering the judgment.

---

⁹ Sardar Maloji v. Sankar Saran, AIR 1962 SC 1737
¹⁰ Emanuel v. Symon [1908] 1 KB 302
c) Where the litigant voluntarily has submitted himself to the jurisdiction of the Courts of the foreign country rendering the judgment.

d) Where the defendant in the character of a plaintiff or counterclaimant selected the forum wherein, he is afterwards sued.

e) Where the defendant has appeared voluntarily.

f) Where the defendant has voluntarily contracted or consented to submit himself to the forum wherein the judgment was obtained.

Hence, an action in personam is generally permissible when the defendant is physically present inside the jurisdiction, submits to the jurisdiction, or may be reached by court order from outside the jurisdiction. In an action in personam, where the parties submit to the court's jurisdiction, the court has the authority to issue an order for the handover of movables. However, a Court has no jurisdiction to pass a decree in respect of an immovable property situated in a foreign State. If a foreign court, in an administration case, purports to decree one-third of the immovable property located in India to a Muslim widow, it is an order of a court without jurisdiction, as the foreign court could not be said to have jurisdiction over immovable property located outside of that country.

**Clauses (b) of Section 13: Foreign Judgement not on merit:** Every determination must be merit-based. If a foreign court determines the parties' rights and responsibilities without evaluating the merits of the case, such a judgement is neither conclusive nor binding on other courts/tribunals. To serve as res judicata, the foreign judgement must be based on the merits of the case, i.e., the judge must apply his mind to determine the veracity of the plaintiff's claims and deliver a verdict. Thus, when the suit is dismissed due to the plaintiff's failure to appear or produce documents prior to the filing of the written statement by the defendant, or where the decree was issued due to the defendant's failure to provide security, or after denying leave to defend, such judgements are not based on the merits.

The Supreme Court in Narasimha Rao v. Venkata Lakshmi\(^\text{11}\) observed that if a foreign judgment has not been given on the merits of the case, the courts in this country will not recognize such judgment. This requirement is fulfilled only when the opposite party is duly

\(^{11}\) Narasimha Rao v. Venkata Lakshmi (1991) 3 SCC 451
served and voluntarily and unconditionally submits to the jurisdiction of the Court and contests the claim or agrees to the passing of the decree with or without appearance\(^\text{12}\). A mere filing of the reply to the claim under protest and without submitting to the jurisdiction of the Court, or an appearance in the Court either in person or through a representative for objecting to the jurisdiction of the Court, should not be considered as a decision on merits of the case\(^\text{13}\).

**Ex parte decree**: According to Private International Law, an ex parte decree of a foreign court is null and void if the party against whom the decree was passed does not appear and does not participate in the court proceedings. One cannot assume that an ex parte decree is based on the merits. But the mere fact that a decision issued ex parte does not necessarily support the conclusion that it was not based on the merits. In M/s International Woolen Mills v. Standard Wool Ltd.\(^\text{14}\), the Supreme Court clarified the phrase "judgement on the merits" while observing ‘It cannot be asserted that the term necessitates a contest and the presentation of evidence from both sides. An ex parte ruling in favor of the plaintiff may be considered a judgement on the merits if some evidence is presented on the plaintiff's behalf and the brief judgement is based on evaluation of this information. When, however, no evidence is presented on the plaintiff's behalf and his complaint is decreed solely due to the absence of the defendant, either as a sanction or in a formal manner, the decision may not be founded on the merits of the case’.

**Consent decree**: A foreign court's ruling on a compromise is a ruling on the merits and must be deemed definitive. In HSBC Bank, USA v. Silverline Technologies Ltd.\(^\text{15}\), the court stated that consent-based international judgements are enforceable. A consent order/decree prevents the court from going into details/merits of the case, and a party who, by giving consent, invites the court to enter an order and judgement cannot raise the defense that the judgement is not based on merits and is therefore not enforceable under Section 13(b) of the CPC.

**Clause (c): Foreign Judgement against International or Indian Law**: A foreign judgement is not binding if: (a) the procedures are based on an inaccurate interpretation of international law; or (b) the foreign court refuses to acknowledge the law of India if it is applicable. Nonetheless, this error must be evident on the surface of the proceedings. When an action is launched in England based on a contract entered in India, and the English Court erroneously...

\(^{12}\) Chicago-Kent College of Law | Illinois Institute of Technology, http://www.kentlaw.edu/cyberlaw/docs/foreign/IndiaAgrawala.rtf

\(^{13}\) Pritam Ashok Sadaphule vs Hima Chugh, C.R.P.148/2011

\(^{14}\) M/s International Woolen Mills v. Standard Wool Ltd., AIR 2001 SC 2134

\(^{15}\) HSBC Bank, USA v. Silverline Technologies Ltd. AIR 2000 Bom 134
concludes that the case is governed by English law and not Indian law, the English Court's judgement must be seen to be founded on an improper understanding of international law. In the case of Narasimha Rao v. Venkata Lakshmi\textsuperscript{16}, the Supreme Court ruled the law under which the parties were married is the only law applicable to marriage issues; no other law applies. So, it is against the law when a foreign judgement is based on a jurisdiction, or a ground not recognized by such law. As a result, the decision is indecisive on the issues at hand and is consequently unenforceable in this country. In the field of private international law, courts refuse to apply a rule of foreign law or to recognize a foreign judgment or arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked / enforced. Thus, foreign judgment is acceptable when it is not contradictory with principle of law laid down by Indian Legislation.

**Clause (d): Foreign Judgement opposed to Natural Justice:** to be binding in India, a foreign judgement must be passed following principles of natural justice. A foreign judgement will not be conclusive if the proceedings in which it was obtained in opposed to natural justice, it must be obtained after due observance of judicial process which implies that first the foreign court rendering justice must be composed of impartial personas, acting fairly, without bias/lies and in good faith, secondly a reasonable notice must be given to the parties to the dispute, and third it must afford each party adequate opportunity of presenting his case. The expression ‘natural justice, covers all matters forming part of the judicial process culminating in the judgement. The procedure must be fair, impartial, and reasonable.

The mere fact that the foreign court did not follow the procedure of Indian Courts or did not observe the Indian rules of evidence will not invalidate a foreign judgment on the ground of proceedings being opposed to natural justice. Further, the expression "natural justice" refers rather to the form of procedure rather than to the merits of the case. There must be something in the procedure anterior to the judgment which is repugnant to natural justice.

The Supreme Court in Sankaran v. Lakshmi\textsuperscript{17}, while interpreting Section 13(d), observed : It is vital to define the precise extent and meaning of the phrase "contrary to natural justice," which has appeared so frequently in legal statements. When applied to foreign judgements, it concerns solely to the alleged procedural flaws of the deciding court and has no bearing on the

\textsuperscript{16} Narasimha Rao v. Venkata Lakshmi (1991) 3 SCC 451

\textsuperscript{17} Sankaran v. Lakshmi, AIR 1974 SC 1764
merits of the case. If the procedures are conducted in accordance with the foreign court's practice, but that practice is not consistent with natural justice, this court will not allow the case to be closed by the foreign court. Hence, a foreign judgement of a competent court is binding even if it is based on an incorrect interpretation of the evidence or the law if the minimum conditions of the judicial process are met. The correctness of a judgement in law or evidence is not a prerequisite for municipal court to recognize its validity. A foreign judgement cannot be attacked on the basis that the Court disagrees with the foreign court's result if the norms of natural justice have otherwise been observed.

Clause (e): A foreign judgement is not conclusive where it has been obtained by fraud: It is well established principle of private international law that if a foreign judgement is obtained by fraud, it will not operate as res judicata. All judgments whether pronounced by domestic or foreign courts are void if obtained by fraud, for fraud vitiates the most solemn proceedings of the court of justice. No judgment can be allowed to stand if it has been obtained by fraud. The Supreme Court in S.P. Chengalvaraya v. Jagannath observed A judgement, decision, or order obtained by deceiving a court, tribunal, or authority is null and void in the eyes of the law, according to a well-established legal principle. Such a judgement / decree / order, whether issued by the initial court or the supreme court, shall be disregarded by all courts, whether superior or inferior. It is subject to challenge in any court, at any moment, by appeal, revision, writ, or even collateral actions.

Clause (f): Foreign Judgement founded on breach of Indian Law: If by means of a foreign judgment a breach of any law in force in India has been committed, the judgment shall not be conclusive, and it will not operate as res judicata. The SC in Renusagar Power Co. Ltd. v. Genera sperate Co. observed that in the field of Private International Law, Courts refuse to apply a rule of foreign law or recognize a foreign judgment or a foreign arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced.” Thus, it is implicit that the foreign law and foreign judgment would not offend against our public policy. Thus, a foreign judgement for a gambling debt would presumably not be enforced in India. The SC in Narsimha Rad v. Venkata Lakshmi held that a marriage governed by the Hindu Marriage Act can only be dissolved on the grounds

18 S.P. Chengalvaraya v. Jagannath, AIR 1994 SC 853
21 Hindu Marriage Act, 1955
mentioned in that Act, a foreign divorce decree based on some other ground would be violative of clause (f), and would, therefore, be unenforceable in India.

It is not needed that the procedure of the foreign court be identical to or even like that of the domestic courts. Any irregularities in the method specified for the foreign court by the law of the country to which it belongs would not render its decision illegal. The legal basis of the claim in the foreign court must be a violation of the laws in effect here; this is addressed in clause (f), not differences in procedure between the foreign court and the procedure in effect here. Hence, a foreign judgement cannot be impugned on the basis that the suit could not have been launched in India due to the statute of limitations if limitation just forbids the remedy and does not destroy the right itself. In cases where a foreign court issued a judgement in accordance with the Law of Limitation in effect in that country, but not in accordance with the Law of Limitation in force in India, such judgement may be admissible in an Indian court proceeding based on that verdict.

**Presumption as to foreign judgement**

Section 1422 establishes a presumption that when a document purporting to be a certified copy of a foreign judgement is presented to an Indian court, the court will presume that such a judgement was rendered by a court of competent jurisdiction, unless the contrary appears on the record or is established. The submission of a certified or authenticated copy of a foreign judgement constitutes presumptive evidence of the court's jurisdiction, according to this clause. When read in conjunction with Section 13, Section 14 is not merely a procedural rule, but also a substantive law that recognizes the finality of a foreign judgement in any dispute directly adjudicated between the same parties.

**Enforcement of Foreign Judgement**

A foreign judgment which is conclusive and operates as res judicata by virtue of Section 13 is enforced in India in two ways: (1) by instituting a suit on such foreign judgment; or (2) by instituting execution proceedings.

---

22 THE CODE OF CIVIL PROCEDURE, 1908: Section 14: 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; but such presumption may be displaced by proving want of jurisdiction.
By means of execution proceedings: A foreign judgement that is conclusive and does not fall within the scope of any of clauses (a) to (f) of Section 13 may be enforced in India by commencing execution proceedings in certain specified cases mentioned in Section 44A, which states that "where a certified copy of a 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 a District Court." Section 44A of the Indian Penal Code governs the enforcement of judgements issued by the superior courts of reciprocating territories in India. "Reciprocating territory" refers to any country or territory outside India that the Central Government may, by notification in the Official Gazette, proclaim to be a reciprocating territory for the purposes of Section 44A. "Superior Courts" refers to the courts named in the said notification. In other words, "reciprocating territory" refers to a region with which we have reciprocal enforcement agreements. If it is proven to the court's satisfaction that the decree falls within any of the exceptions listed in clauses (a) through (f) of Section 13, the District Court will refuse to implement the decree. If it is determined that a decree of the type described in Section 44A cannot be submitted in a competent District Court in India without first being executed by the foreign court that issued it, the intent of Section 44A will be defeated.

By means of a suit on Foreign Judgment: Except for situations mentioned by Section 44A, a foreign judgement can only be enforced through a lawsuit. This is because a foreign court, tribunal, or quasi-judicial authority's decision is not enforceable in a country until it is incorporated into a court decree of that country. A foreign decision that does not contain any of the faults listed in clauses (a) through (f) of Section 13 creates a new obligation between the parties. In such a case, the court cannot address the merits of the initial claim, and any matter directly adjudicated between the same parties shall be final, with the exceptions listed in Section 13. Article 101 of the Limitation Act stipulates that this lawsuit must be filed within three years after the date of the verdict.

Conclusion

In international litigation, the Res Judicata of foreign decisions is a crucial principle. Articles 13 and 14 of the Code of Civil Procedure of 1908 stipulate the circumstances for a foreign
judgement to be binding and the exceptions to the Res Judicata principle. These clauses ensure that foreign judgements are only implemented if they meet specific conditions and that parties are not subjected to repeated lawsuits involving the same issue. To prevent legal problems, individuals and businesses participating in cross-border transactions and litigations must comprehend the principles of Res Judicata of foreign decisions.