



## ELP Dispute Resolution: Article



### SUPREME COURT DECIDES THE APPLICABLE PERIOD OF LIMITATION FOR ENFORCEMENT OF DECREES FROM RECIPROCATING TERRITORIES.

#### BANK OF BARODA VS. KOTAK MAHINDRA BANK LTD<sup>1</sup>.

##### FACTUAL BACKGROUND

- The Respondent's predecessor issued a Letter of Credit (LC) on behalf of one of its customers in favour of one M/s Granda Worldwide Investment Company, London. Subsequently, instructions were issued by the Respondent to the London branch of the confirming bank i.e. the Appellant, to honour the LC. Accordingly, the LC was discounted by the Appellant.
- Thereafter, a suit was filed by the Appellant against the predecessor of the Respondent for recovery of its dues in London. The said suit was decreed in favour of the Appellant on February 20, 1995. On August 5, 2009 i.e. after almost 14 years of the suit being decreed, the Appellant filed an execution petition in terms of Section 44-A read with Order 21 Rule 3 of the Code of Civil Procedure, 1908 (CPC).
- This execution petition was dismissed by the Additional City Civil & Session Judge, Bangalore for being time barred under Article 136 of the Limitation Act, 1936 (the Act). The order of the Ld. City Civil and Sessions Judge was also upheld by the High Court. Thus, the present appeal before the Hon'ble Supreme Court (SC) was preferred by the Appellant.
- The primary issue in the present case pertained to the applicable period of limitation for filing an application for execution of a foreign decree of a reciprocating territory<sup>2</sup>.

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

<sup>2</sup> As per Explanation 1 to Section 44-A of CPC: "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

## ARGUMENTS ADVANCED BY THE PARTIES

- On behalf of the Appellant it was argued that the execution petition was in fact within limitation for the following reasons:
  - The Act did not provide for a limitation period for execution of a foreign decree passed in a reciprocating country. Therefore, the Appellant submitted before the SC that the principle of delay and laches (as applied in writ proceedings) ought to be applied in the present case and not the statute of limitation.<sup>3</sup>
  - Even the limitation period for 12 years (as provided by Article 136 of the Act) was to be calculated from that date of filing of petition under 44-A of CPC.<sup>4</sup>
- While on the other hand, the Respondent, inter alia, advanced the following arguments:
  - The Law of Limitation of England would be applicable in this case. As per the same, the applicable limitation period was 6 years from the date of decree and thus no execution petition could have been filed after February 20, 2001.
  - In any case, even the limitation period of 12 years (as provided by Article 136) has long expired.

## FINDINGS OF THE COURT

- Dismissing the appeal preferred by the Appellant, the SC held that:
  - Section 44-A of CPC did not create a fresh period of limitation and only enabled the District Court to execute the decree as if it had been passed by an Indian court.
  - Article 136 of the Act would be inapplicable since the legislative intent seems to restrict its applicability to Indian decrees of ‘civil courts’. A civil court, as defined in India, may not be the same as in a foreign jurisdiction.
  - In recent years, almost all common law countries have been of the view that limitation cannot be treated as a purely procedural law.<sup>5</sup> Therefore, the view worldwide appears to be that limitation law of the country where the decree is issued (**Cause Country**) would be applied even in the country where the decree is sought to be executed (**Forum Country**) and thus, the limitation period for executing a decree passed by a foreign court of reciprocating country in India will be the limitation by the Cause Country.
  - Where the decree holder does not take any steps for execution of the decree during the period of limitation prescribed in the Cause Country for execution of decree in that country, the limitation would start running from the day the decree was passed in the Cause Country and the period of limitation prescribed in the Cause Country would apply.
  - When the decree holder takes steps-in-aid to execute the decree in the Cause Country, and the decree is not fully satisfied, then a petition for execution can be filed in India within a period of 3 years, as prescribed by Article 137 of the Act, from the finalization of execution proceedings in the Cause Country.

## ANALYSIS

- By clarifying the law as to the period of limitation for execution of foreign decrees, the present decision of the SC has brought some much-needed relief to a decree holder in a reciprocal territory. However, the commercial implications of the present judgment may in fact be far-reaching. The judgment can potentially bar various

<sup>3</sup> As the negotiations for realization of the decree had been ongoing ever since the passing of the decree, by means of the said argument, the Appellant tried to impute that there could have been no delay and laches in filing the execution petition.

<sup>4</sup> The Court observed that a similar view had been taken by the Madras High Court in Para 19 of *Sheik Ali v. Sheik Mohamed*, AIR 1967 Mad 45. However, a contrary view had also been taken by the P & H HC in *Lakshpat Rai Sharma v. Atma Singh*, AIR (58) 1971 P& H. The SC rejected this particular argument of the Appellant’s and gave its reasons in Paras 13, 14 and 17 of its judgment.

<sup>5</sup> Please see Section 1 of the Foreign Limitation Periods Act, 1984 (United Kingdom); Also see United Conflict of Laws Limitation Act, 1982 (U.S.A.)

execution proceedings in India where the holder of a decree of a superior court of reciprocating territory was under the bona fide assumption that the applicable limitation period would be of 12 years as per Article 136 of the Act.

- That being said, the present judgment will not only affect the execution of foreign decrees of reciprocating territories but will also have a major impact on the enforcement of foreign arbitral awards as well.
- Very recently in *Cairn India Ltd. & Ors. v. Government of India*<sup>6</sup>, the Delhi High Court has held that the applicable period of limitation for enforcement of foreign arbitral awards (under the New York Convention) was 12 years as provided under Article 136 of the Act. It would thus be interesting to see whether the principles propounded by the SC in the present judgement would be attracted to ascertain the applicable limitation period for enforcement of foreign awards, instead of the present 12 years under Article 136 of the Act. Should there be any conflict, it remains to be seen whether this judgment would have a prospective or retrospective effect.

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<sup>6</sup> Para 22 of order dated 19.02.2020 in O.M.P.(EFA)(COMM.) 15/2016 & I.A. Nos. 20459/2014 & 3558/2015. It may be noted that similar views have also been taken by the SC in Paras 30-32 of *Fuerst Day Lawson Ltd. vs. Jindal Exports Ltd.* (2001) 6 SCC 356; the Madras High Court in Para 43 of *Compania Naviera 'SODNOC' v. Bharat Refineries Ltd.* AIR 2007 Mad 251; and the Bombay High Court in Para 26 of *Imax Corporation vs. E-City Entertainment (I) Pvt. Ltd. and Ors* 2020 (1) ABR 82.