

EXECUTION OF FOREIGN DECREE IN INDIA

India's growing trade relations with various countries have given rise to commercial disputes emerging in jurisdictions outside India. To recognise and allow enforcement of foreign decrees, India has executed bilateral treaties with various countries with respect to reciprocity in enforcement of judgments and decrees. The present primer deals with the fundamentals of enforcing a foreign decree/ judgment in India.

1. What is a foreign judgment or a foreign decree?

Section 2(6) of the Code of Civil Procedure, 1908 defines the term 'foreign judgment' as a judgment of a foreign court. The term 'foreign court' is defined under section 2(5) of Code of Civil Procedure, 1908 to mean, a court situated outside India and not established or continued by the authority of the Central Government of India.

Explanation II to section 44A of the Code of Civil Procedure, 1908 defines the term 'foreign decree' as, "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 arbitral award, even if such an award is enforceable as a decree or judgment.

2. Which international convention and domestic legislation governs execution of foreign decrees in India?

India has executed bilateral treaties with various countries with respect to reciprocity in enforcement of judgments and decrees. Pursuant to signing of such bilateral treaty with any country, the Indian Government by way of a notification will declare such country to be a reciprocating territory. In the sphere of public international law, the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters holds the field in respect of recognition and enforcement of foreign judgments. It is noteworthy that India is not a signatory to the aforementioned convention.

The Code of Civil Procedure, 1908 governs the execution of foreign decrees in India. A foreign decree from the superior court of any reciprocating territory can be executed in an Indian court, as if, the foreign decree had been passed by an Indian court.

3. What is a 'reciprocating territory'? Which territories have been notified till date as reciprocating Territories of India?

The Code of Civil Procedure, 1908 defines "reciprocating territory" as any country or territory outside India which the Central Government of India may, by notification in the official gazette, declare to be reciprocating territory for the purposes of enforcement of foreign judgements. As on date, the superior courts of the following countries have been notified as reciprocating territories: (a) Aden; (b) Bangladesh; (c) the Cook Islands (including Niue) and the Trust Territories of Western Samoa, Papua and New Guinea; (d) Fiji; (e) Hong Kong; (f) Malaysia; (g) New Zealand; (h) Singapore; (i) Trinidad and Tobago (j) the United Arab Emirates; (k) the United Kingdom.

4. Which court in India is competent to execute a foreign decree?

Under the Code of Civil Procedure, 1908, the District Court, i.e., the principal civil court of first instance, having jurisdiction over the property, against which execution is sought, is situated or the person against whom the foreign judgment or decree is passed actually resides or carries on business, or personally works for gain. High Courts exercising original civil jurisdiction are also competent to execute a foreign decree in appropriate cases.

5. How are foreign decrees executed in India?

Foreign decrees are executed in India depending on whether they are a decree from reciprocating territory or a decree from a non-reciprocating territory.

6. How is a decree of a reciprocating territory executed in India? What are the supporting documents required while executing a judgment of a reciprocating territory in India?

A decree of a reciprocating territory may be executed in India as if the decree has been passed by a District Court in India. In order to execute a judgment of a reciprocating territory in India, an application for execution must be made to the appropriate District Court and the following documents must be submitted along with the application for execution:





- (a) a certified copy of the foreign decree of the superior court; and
- (b) certificate from the foreign court stating the extent, if any, to which the decree has been satisfied or adjusted.

7. When can it be said that a foreign decree is not conclusive? Are there any grounds available to a judgment debtor for challenging the execution of the foreign decree?

A foreign decree is not conclusive if:

- a. the said foreign decree has not been pronounced by a court of competent jurisdiction;
- b. the said foreign decree has not been given on the merits of the case;
- c. the said foreign decree 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 Indian cases in which such law is applicable;
- d. the proceedings in which the judgment was obtained are opposed to natural justice;
- e. the said foreign decree has been obtained by fraud; and
- f. the said foreign decree sustains a claim founded on a breach of any law in force in India

If any one of the above grounds are not fulfilled, a foreign decree cannot be said to be conclusive and therefore a judgment debtor can base his defence on the above grounds.

8. What is the difference between recognition and execution of a decree?

Before executing a foreign decree, the District Court will hear the parties and decide on the conclusiveness of the foreign decree, as provided in the response to query 7. The foreign decree is required to pass the conclusiveness test. This is known as recognition of a foreign decree and is a pre-condition for enforcing the foreign decree. Once the foreign decree is recognised, it can be executed under section 44A of the Code of Civil Procedure, 1908. Unless a foreign decree is said to be conclusive, it cannot be executed.

9. What kind of foreign decrees can be executed in India?

Foreign decrees of a reciprocating territory that are money decrees (not including taxes or other charges of a similar nature fines or other penalties or sums payable further to an arbitral proceeding) can be executed in India. Also, foreign decree of a reciprocating territory granting either mandatory or prohibitory injunction and judgments passed in default that are final and conclusive in nature can be executed in India.

10. How is a judgment of a non- reciprocating territory executed in India?

The judgment of a non-reciprocating territory cannot be directly executed in India in the same manner as that for enforcing a judgment of a reciprocating territory. For executing a judgment of a non-reciprocating territory, a fresh suit must be filed in the Indian court of appropriate jurisdiction based on the foreign judgment or the original cause of action, or both. A judgment from a non-reciprocating territory only has evidentiary and persuasive value and such judgment must be filed for execution within 3 (three) years from the day the judgment was passed.

11. What is the limitation period for executing a foreign decree?

In the case of a non-reciprocating territory, as the judgment holder is required to file a fresh suit before the competent court in India as per the Limitation Act, 1963 the judgment holders must file a suit within 3 (three) years from the date of the foreign decree.

The Supreme Court of India in the judgment of Bank of Baroda vs, Kotak Mahindra Bank has held that the limitation period in the case of a decree from a reciprocating territory for making an application for execution of a foreign decree in India is 3 (three) years from the date on which the right to apply accrued. The right to apply accrues, under 2 (two) circumstances (i) the decree-holder does not take steps to execute the decree in the cause country, then the right to apply accrues when the decree was passed by the foreign court. (ii) when the decree-holder takes steps to execute the decree in the cause country and the decree is not fully satisfied, then the right to apply accrues when the execution proceedings in the cause country are finalised.



12. Is there any fee payable for executing a foreign decree?

As foreign decree from the superior courts of a reciprocating territory can be executed in an Indian court, as if, the foreign decree had been passed by an Indian court, the party seeking execution of such foreign decree must pay a court filing fee, which varies from one State to the other.

In the case of a non-reciprocating territory, as a fresh civil suit is required to be filed, an *ad valorem* fee i.e. a fee in proportion to the claim is to be deposited with the court. The proportion of fee which is payable as court fees is different in each state.

13. Can decision of the Indian court on execution of foreign decree be appealed?

As foreign decree from the superior courts of a reciprocating territory can be executed in an Indian court, as if the foreign decree had been passed by an Indian court, the party seeking execution of such foreign decree has a right to appeal such judgments. Such right will be identical to the right to appeal in case of an Indian decree.

In the case of a non-reciprocating territory, as a fresh civil suit is required to be filed the question of appealing the said judgment does not arise.

14. Can Indian courts execute a foreign decree against a third party?

The execution of a foreign decree can be made only against a judgment debtor i.e. party against which the judgment or decree has been rendered. However, under the Code of Civil Procedure, 1908 the Indian court can execute a 'garnishee order' whereby the Indian court can direct a third party that owes money to a judgment debtor to pay the judgment creditor instead of the judgment debtor.



Disclaimer: The information contained in this document is not a legal advice or legal opinion. The contents recorded in the said document are for informational purposes only and should not be used for commercial purposes. Acuity Law LLP disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause