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SUPREME COURT RULES THAT PERIOD OF LIMITATION FOR EXECUTION OF FOREIGN DECREES SHALL BE GOVERNED BY LAW OF THE RECIPROCATING TERRITORY

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The Hon'ble Supreme Court of India in *Bank of Baroda v Kotak Mahindra Bank Limited*, Civil Appeal No. 2175 of 2020 (judgment rendered on 17 March 2020), has clarified that the period of limitation for executing a decree, under Section 44A of the Code of Civil Procedure, 1908 (CPC), passed by a superior court of a reciprocating territory (Cause Country) will be the limitation prescribed under the laws of the Cause Country. Once the period of limitation prescribed in the Cause Country is over, no execution proceedings could be filed in India. Where the execution proceedings are initiated in India pursuant to the decree passed in the Cause Country, the limitation period for such proceedings shall be governed by Article 137 of the Limitation Act, 1963 (Act).

Background

In 2009, Bank of Baroda filed an Execution Petition against Kotak Mahindra Bank under Section 44A read with Order 21 Rule 3 of the CPC for recovery of Rs.16,43,88,187.86. The Execution Petition was filed in view of the decree passed by the High Court of Justice, Queens Bench, Divisional Commercial Court of London (UK Court) on 20 February 1995 for US\$ 1,267,909.26 in favour of Bank of Baroda. The maintainability of the Execution Petition was challenged primarily on the ground of limitation.

Arguments Advanced by the parties

Bank of Baroda contested that the Act does not prescribe any period of limitation for execution of a foreign decree passed by superior courts of a reciprocating territory. Therefore, at best, the doctrine of delay and laches, as applicable to writ petitions shall apply to execution proceeding. It further argued that even if the Act is presumed to be applicable; the limitation for filing execution petitions shall be governed by Article 136 of the Act. However, under Article 136 of the Act, the computation of limitation shall commence from the date of filing of the execution petition as a foreign decree is treated to be an Indian decree only upon satisfying the requirement of Section 44A of the CPC.

Kotak Mahindra Bank, on the other hand, argued that since the decree was passed by the UK Court, Section 24 of the Limitation Act of 1980, as applicable in the United Kingdom shall apply i.e. 6 years from the date of passing of the decree. The bank further argued that even if the Act is presumed to be applicable in the present case, under Article 136 of the Act, the period of limitation shall commence from the date of passing of the decree as Section 44A of the CPC provides that a decree passed by superior courts of reciprocating territories shall be treated as a decree passed in India.

Issues Considered by the Supreme Court

The Supreme Court framed the following three issues for consideration:

- 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?
- What is the period of limitation for executing a decree passed by a foreign court (from a reciprocating country) in India?
- 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?

Decision of the Supreme Court

Issue 1

The Supreme Court rejected the argument that there is no limitation period for execution of foreign decree in India while observing that the term "*application*" in Section 3 of the Act shall be deemed to include execution petitions. The period of limitation shall be governed by the Act and not by Section 44A of the CPC, since the latter provides only for the procedure to be followed for executing a foreign decree.

Issue Nos. 2 and 3

On the second and third issue, the Supreme Court, while taking recourse to the principles of conflict of laws and also noting that India had become a global player in the international business arena, leading to increasing interaction and interplay between people and entities across the globe, held that limitation law of the Cause Country should be applied even in execution proceedings initiated in a foreign country (Forum Country). The Supreme Court noted that it was important to reconsider the old position under common law, wherein the law of limitation was considered to be procedural law. In this regard, the Hon'ble Court made the following observations:

- Since the Act leads to extinguishment of rights and remedies of the parties, it shall be considered as substantial law and not merely procedural law.

The period of limitation shall be governed by the law of the Cause Country and not the Forum Country. However, in cases where the law of the Cause Country is silent on the period of limitation, the law of the Forum Country will apply. Thus, for execution of foreign decrees in India, the law of limitation in the Cause Country shall apply and not the laws of India.
- For initiating proceedings under Section 44A of the CPC, the period of limitation shall be governed by Article 137 of the Act and not Article 136 of the Act. Article 136 deals only with decrees passed by Indian courts and therefore cannot be deemed to include a foreign decree as well.
- Thus, the period of limitation shall commence from the date on which the decree is passed in the Cause Country and shall be governed by the laws of the Cause Country. The decree holder shall be at liberty to initiate execution proceedings in the Cause Country or the Forum Country within the period of limitation of the Cause Country.
- However, the courts in India cannot entertain any execution proceedings which are initiated in India, beyond the period of limitation in the Cause Country.

- Further, in cases where the proceedings are initiated in India in view of part satisfaction of the decree in the Cause Country, the period of limitation shall commence from the date on which the execution proceedings in the Cause Country are finalised and the application under Section 44A of the CPC can be filed within 3 years of the finalisation of the execution proceedings in the Cause country, as prescribed by Article 137 of the Act.

Comment

This landmark judgement by the Hon'ble Supreme Court while clarifying the law of limitation for execution of foreign decrees in India, also recognises the importance of applying the principles of conflict of laws in resolving cross-border disputes. Another core aspect emphasised by the present judgment is the principle of finality of litigation. A litigant having a foreign decree in its favour and intending to initiate execution proceedings in India must be mindful of the law of limitation in the country whose superior court passed the decree.

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