

# Enforcement of Foreign Judgments

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Fundamental Principles [India]

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## TABLE OF CONTENTS

	Page
I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS) .....	1
A. Ability to Apply for Recognition and Enforcement of a Court Judgment .....	1
1. Is it possible to apply for enforcement of a foreign court judgment in your country? .....	1
B. Applicable Law: General Rules .....	1
1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country? .....	2
C. Special Rules: European Union .....	2
1. Are there any special rules regarding the enforcement of a foreign court judgment in your country? .....	2
2. Does the European Union have a special procedure to enforce court judgments coming out of its member states? .....	2
D. Average Duration of Enforcement Procedure .....	2
1. What is the average length of time for this kind of procedure? .....	2
II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons .....	2
A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial? .....	2
B. Costs and expenses .....	3
1. What kind of cost and expenses can a claimant expect in this enforcement procedure? .....	3
III. FORMAL REQUIREMENTS .....	3
A. Time limit .....	3
1. Is there a time limit to apply for enforcement of a foreign court judgment? .....	3

B.	Final and Definitive Court Judgment: Provisional Enforcement .....	3
1.	Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive? .....	4
C.	Necessary Requirements.....	4
1.	What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced? .....	4
D.	Other Formal Requirements: Court Fees.....	4
1.	Is it mandatory to pay Court Fees for this kind of application? .....	4
E.	Are there any other formal requirements in your country to enforce a court judgment? .....	4
IV.	PROCEDURE.....	5
A.	Competent court .....	5
1.	Which Court or courts are competent to decide an enforcement application? .....	5
B.	Informational Requirements for the Application to Enforce a Foreign Court Judgment .....	5
1.	What information must be contained in the enforcement application of a foreign court judgment? .....	5
C.	What documents must be included with/attached to the application to enforce a foreign court judgment? .....	6
D.	Phases of the Procedure .....	7
1.	What are the phases of the procedure to enforce a foreign court judgment? .....	7
E.	Opposition of the Defendant .....	7
1.	Can a defendant oppose to this enforcement application? .....	7
2.	Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons? .....	7
F.	Appeal and its Consequences in this Procedure .....	8

1.	Is it possible to appeal a court decision to recognize and enforce a foreign court decision? .....	8
2.	Can this appeal suspend the enforcement? .....	8
G.	Recovery of judicial costs and expenses .....	8
1.	Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application? .....	9
V.	RECOVERY OF THE DEBT .....	9
A.	Means of Enforcement.....	9
1.	What types of assets are subject to enforcement of the court's judgment? .....	9
VI.	OTHER ISSUES OF INTEREST IN YOUR JURISDICTION. ....	9
A.	Any other issues of interest in your jurisdiction .....	9

## I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

### A. Ability to Apply for Recognition and Enforcement of a Court Judgment

#### 1. Is it possible to apply for enforcement of a foreign court judgment in your country?

#### Answer:

##### Judgments / Decrees passed by superior courts of Reciprocating Territories

India is not a party to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. India has however executed bilateral treaties with various countries regarding reciprocity in enforcement of judgments and decrees. Whenever any such treaty is entered into with any country, such country is declared as a reciprocating territory by the Indian Government by way of a notification.

Pursuant to Section 44A of the (Indian) Code of Civil Procedure, 1908 (“**CPC**”), foreign decrees passed by the “superior courts” of “reciprocating territories” (as notified by the Central Government) may be enforced in India by filing execution proceedings. A “superior court” with reference to any such territory would mean such courts as are specified in the said notification. The foreign decree must be a decree or judgment 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.

##### Judgements of courts of Non-reciprocating Territories

As far as judgments / decrees passed by courts of “non-reciprocating territories” are concerned, the same cannot be enforced directly. The person in whose favor such a judgment / decree has been passed (“**Decree Holder**”) can institute a law suit before a competent Indian Court for a decree based on such foreign judgment. Such a foreign judgment would be treated as conclusive by the Indian court provided it meets the requirements of Section 13 CPC. The said requirements are discussed subsequently. Once a decree is passed by an Indian court based on such foreign judgment, the Decree Holder would have to file execution proceedings in India for enforcement of the same.

##### List of Reciprocating Territories

The countries presently notified as reciprocating territories are: (1) United Kingdom, (2) Aden; (3) Fiji, (4) Republic of Singapore, (5) Malaysia, (6) Trinidad and Tobago, (7) New Zealand, (8) The Cook Island (including Niue) & the Trust Territory of Western Samoa, (9) Hong Kong, (10) Papua & New Guinea, (11) Bangladesh and (12) United Arab Emirates. India has also entered into bilateral treaties with Afghanistan, Azerbaijan, Bahrain, Bulgaria, France, Kazakhstan, Mongolia, Turkey and Ukraine. However, they are not yet notified as reciprocating territories.

### B. Applicable Law: General Rules

**1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

**Answer:** The recognition and enforcement of foreign court judgments in India is governed by Section 44-A read with Section 13 of the CPC.

**C. Special Rules: European Union**

**1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

**Answer:** N.A.

**2. Does the European Union have a special procedure to enforce court judgments coming from its member states?**

**Answer:** N.A.

**D. Average Duration of Enforcement Procedure**

**1. What is the average length of time for this kind of procedure?**

**Answer:** The enforcement procedure in case of judgements / decrees passed by foreign courts of reciprocating territories may take about four to six months or an even longer period if the defendant / respondent adopts dilatory tactics. Further, additional time may be required to sell the assets (which will vary according to the type of assets), if any, subject to the enforcement petition being allowed.

**II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons**

**A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?**

**Answer:** Yes, a court can deny recognition and enforcement of a foreign court judgment, if such foreign judgment is not conclusive. Under Section 13 of the CPC, a foreign judgment becomes inconclusive and consequently, unenforceable in the following circumstances:

- where it has not been pronounced by a court of competent jurisdiction;
- where it has not been given on the merits of the case;
- 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 India in cases in which such

law is applicable;

- where the proceedings in which the judgment was obtained are opposed to natural justice;
- where it has been obtained by fraud;
- where it sustains a claim founded on a breach of any law in force in India.

## **B. Costs and expenses**

### **1. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

**Answer:** The claimant would be required to bear court fee, advocate's fee & expenses, expenses on obtaining from the foreign court (which passed the judgment), a certified copy of the judgment and a certificate stating the extent, if any, to which the decree has been satisfied or adjusted. In case of decrees / judgments passed by superior courts of reciprocating territories, only a fixed and nominal court fee is required to be paid. As aforesaid, in case of a decree / judgment passed by a court situated in a non-reciprocating territory, a suit based on such decree / judgment is required to be filed before the competent Indian court. Ad-valorem Court Fee is payable upon the filing of such a suit which may vary between about 1% to 12% of the amount claimed depending upon the State in which the suit is filed. If the foreign court judgment and/or the aforesaid certificate are not in English, expenses on translation of the documents may also have to be incurred.

## **III. FORMAL REQUIREMENTS**

### **A. Time limit**

#### **1. Is there a time limit to apply for enforcement of a foreign court judgment?**

**Answer:** The limitation period for filing execution proceedings for enforcement of a judgement / decree from a reciprocating territory is twelve (12) years from the date on which it becomes enforceable.

With respect to a judgment / decree passed by a court of a non-reciprocating territory, a fresh suit based on such foreign judgment is required to be instituted before the competent court in India within a period of three (3) years from the date of such judgment / decree.

### **B. Final and Definitive Court Judgment: Provisional Enforcement**

1. **Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

**Answer:** Yes, it is mandatory for the judgment to be a final and definitive court judgment.

### **C. Necessary Requirements**

1. **What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?**

**Answer:** As mentioned above, a foreign court judgment of a 'superior court' of a 'reciprocating territory' can be recognized and enforced in India unless:

- it has not been pronounced by a court of competent jurisdiction;
- it has not been given on the merits of the case;
- 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 India in cases in which such law is applicable;
- the proceedings in which judgment was obtained are opposed to natural justice;
- it has been obtained by fraud;
- it sustains a claim founded on a breach of any law in force in India.

### **D. Other Formal Requirements: Court Fees**

1. **Is it mandatory to pay court fees for this kind of application?**

**Answer:** Yes, Court Fees will be required to be paid as per the table of fee of the particular court. However, it is only a fixed and nominal court fee as against ad-valorem Court Fee which required to be paid upon the filing of a suit.

- E. **Are there any other formal requirements in your country to enforce a court judgment?**

**Answer:** The application for execution must be accompanied by: (a) a certified copy of the foreign judgment, (b) a certificate from the foreign court stating the extent, if any, to which the decree has been satisfied or adjusted, (c) an affidavit in support of the



application, (d) an authorization in favour of the Advocate filing the application. Further, there may be certain other formal requirements under the procedure of the court in which the application has been filed such as requirements relating to the number of copies to be filed, additional affidavits, declarations, documents, etc.

#### **IV. PROCEDURE**

##### **A. Competent court**

##### **1. Which court or courts are competent to decide an enforcement application?**

**Answer:** The enforcement application may be filed in a district court, i.e. the court of first instance, within the territorial limits of whose jurisdiction, the property against which execution is sought is situated or the judgment debtor (person against whom the foreign judgment or decree is passed) actually and voluntarily resides or carries on business, or personally works for gain.

##### **B. Informational Requirements for the Application to Enforce a Foreign Court Judgment**

##### **1. What information must be contained in the enforcement application of a foreign court judgment?**

**Answer:** The CPC under Order XXI Rule 11 specifies the contents of a written application for execution. An execution application shall be signed and verified and shall contain the following particulars in a tabular form: -

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any, appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustments of the matter in controversy has been made between the parties subsequent to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such application and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before

or after the date of the decree sought to be executed;

- (h) the amount of the costs (if any) awarded;
- (i) the name of the person against whom execution of the decree is sought; and
- (j) the mode in which the assistance of the court is required, whether -
  - (i) by the delivery of any property specifically decreed;
  - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
  - (iii) by the arrest and detention in prison of any person;
  - (iv) by the appointment of a receiver;
  - (v) otherwise, as the nature of the relief granted may require.

In addition to the above:

- (a) where the arrest and detention in prison of the judgment debtor is sought, the application shall state, or be accompanied by an affidavit stating, the grounds on which the arrest is applied for.
- (b) where the attachment of any movable property belonging to a judgment debtor but not in his possession is sought, an inventory of the property to be attached containing a reasonably accurate description of the same has to be annexed to the application;
- (c) where the attachment of any immovable property belonging to the judgment debtor is sought, the application shall contain: (i) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers, (ii) a specification of the judgment debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

**C. What documents must be included with/attached to the application to enforce a foreign court judgment?**

**Answer:** The application for execution must be accompanied by: (a) a certified copy of the foreign judgment, (b) a certificate from the foreign court stating the extent, if any, to which the decree has been satisfied or adjusted, (c) an affidavit in support of the application, (d) an authorization in favour of the Advocate filing the application. Further, certain other supporting applications, affidavits, declarations, documents, etc. may have to be filed under the procedure of the court in which the application has been filed.

## **D. Phases of the Procedure**

### **1. What are the phases of the procedure to enforce a foreign court judgment?**

**Answer:** The procedure to enforce a foreign court judgment is as follows:

- (a) Filing of a written application for execution along with the requisite documents, as specified above.
- (b) Upon receiving the application, the court would ascertain whether the application complies with all the requirements.
- (c) If not, the court would allow the decree holder to remedy the defect then and there or within a time to be fixed by the court.
- (d) If the defect is not remedied, the court shall reject the application.
- (e) Once the defect is remedied, the court shall issue a notice to the person against whom the execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him.
- (f) However, the court may issue a process in the execution of a foreign judgment without issuing such a show cause notice, if the court considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.
- (g) If the person to whom the show-cause notice is issued, does not appear or does not show cause to the satisfaction of the court why the decree should not be executed, the court would order the execution.
- (h) However, where the person offers any objection to the execution of the decree, the court would consider the objection and make such order as it deems fit.
- (i) If the court orders execution, it will issue a 'process' for execution of the decree and shall deliver it to the proper officer to be executed.
- (j) The court is required to specify the date on or before which it shall be executed and also the date on or before which it shall be returned to the court.

## **E. Opposition of the Defendant**

### **1. Can a defendant oppose to this enforcement application?**

**Answer:** As specified above, the court is required to issue a show cause notice to the defendant / judgment debtor and the defendant can oppose the enforcement application.

### **2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

**Answer:** There may be various reasons for the defendant to oppose the enforcement of the foreign judgment and the same are as follows:

- (a) the foreign judgment is not conclusive in terms of Section 13 CPC, that is to say:
  - (i) where it has not been pronounced by a court of competent jurisdiction;
  - (ii) where it has not been given on the merits of the case;
  - (iii) 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 India in cases in which such law is applicable;
  - (iv) where the proceedings in which the judgment was obtained are opposed to natural justice;
  - (v) where it has been obtained by fraud;
  - (vi) where it sustains a claim founded on a breach of any law in force in India.
- (b) the application is barred by limitation;
- (c) the executing court does not have the jurisdiction to entertain the application.

Further, there could be certain other objections such as the property against which execution is sought does not belong to the judgment debtor, the judgment debtor has been adjudged insolvent by a competent court, etc.

## **F. Appeal and its Consequences in this Procedure**

### **1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?**

**Answer:** Yes, it is possible to appeal a court decision to recognize and enforce a foreign court decision.

### **2. Can this appeal suspend the enforcement?**

**Answer:** An appeal does not automatically suspend the enforcement. However, along with the appeal, the appellant may file an application for such suspension and the appellate court may, in its discretion, suspend the enforcement.

## **G. Recovery of judicial costs and expenses**

1. **Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

**Answer:** Yes, the court is empowered to determine by whom and to what extent should the costs of and incidental to the application should be paid. The award of costs is governed by the CPC and the rules of the concerned High Court in this regard. However, the costs awarded by Indian courts are generally nominal and may not compensate the successful party for the entire cost which it may have incurred.

## **V. RECOVERY OF THE DEBT**

### **A. Means of Enforcement**

1. **What types of assets are subject to enforcement of the court's judgment?**

**Answer:** All movable and immovable property as well as claims and rights may be subject to enforcement by the court. In the case of a money decree, a judgment-debtor may also be arrested in execution of the decree and detained in civil prison for a maximum period of 3 months as per Section 58 of the CPC.

## **VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION**

### **A. Any other issues of interest in your jurisdiction**

**Answer:** None.

**Submitted by**

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