

Foreign Court, Foreign Judgement (Sec. 13)

The Indian Code of Civil Procedure, 1908 (CPC) lays down the procedure for enforcement of foreign judgments and decrees in India. CPC, 1908 had defined the following as-

Section 2(5) “foreign Court” means a Court situated outside India and not established or continued by the authority of the Central Government.

Section 2(6) “foreign judgment” means the judgment of a foreign Court.

Nature and Scope of Foreign Judgments

Section 13 embodies the principle of res judicata in foreign judgments. It embodies the principle of Private International law that a judgment delivered by a foreign court of competent jurisdiction can be executed and enforced in India.

Object of Recognizing Foreign Judgments

The judgment of a foreign court is enforced on the principle that where a foreign court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim in the country where the judgment needed to be enforced. The rules of private international law of each state differ in many respects, but by the comity of nations certain rules are recognized as common to civilized Jurisdictions. Through part of the judicial system of each state these common rules have been adopted to adjudicate upon disputes involving a foreign element and to enforce judgments of foreign courts, or as a result of International conventions. Such a recognition is accorded not as an act of courtesy but on consideration of basic principles of justice, equity and good conscience. An awareness of foreign law in the parallel jurisdiction would be a useful guideline in determining our notions of justice and public policy. We are a Sovereign Nation within our territory but “ it is not derogation of sovereignty to take accounts of foreign law”.

“We are not provincial as to say that every solution of the problem is wrong because we deal with it otherwise at home”.Therefore, we shall not brush aside foreign judicial processes unless doing so, “would violate some fundamental principle of justice & deep-rooted traditions of common weal”.

Jurisdiction of Foreign Courts

In Private International Law, unless a foreign court has jurisdiction in the international sense, a judgment delivered by that court would not be recognized in India. But it considers only the territorial competence of the court over the subject-matter and defendant. Its competence or jurisdiction in any other sense is not regarded as material by the court in this country.

Presumption as to foreign judgments

Section 14 states the presumption that an Indian court takes when a document supposing to be a certified copy of a foreign judgment is presented before it. The Indian Courts presume that a foreign Court of competent jurisdiction pronounced the judgment unless the contrary appears on the record, but by proving want of jurisdiction may overrule such presumption.

Section 14. Presumption as to foreign judgments – 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 to competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction[6].

Conclusiveness of Foreign Judgments

Section 13 lays down the fundamental rules which should not be violated by any foreign court in passing a decree or judgment. The decree or judgment of foreign court will be conclusive except where it comes under any of the clauses (a) to (f) of Section 13.

When foreign judgment is 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 recognize 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;
- (f) Where it sustains a claim founded on a breach of any law in force in India.

Foreign Judgments when cannot be Enforced in India

Before enforcing a foreign judgment or decree, the party enforcing it must ensure that the foreign judgment or decree must not fall under these 6 cases. If the foreign judgment or decree falls under any of these tests, it will not be regarded as conclusive and hence not enforceable in India. Under Section 13, there are six cases when a foreign judgment shall not be conclusive. Six tests are discussed below.

