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Foreign Notarized Power of Attorney Invalid in India Without ‘Reciprocating Country’ Status

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Introduction

In cross-border legal transactions, particularly those involving property and litigation, powers of attorney executed abroad have become essential tools. However, their legal validity and evidentiary admissibility in Indian courts are not automatic. The Indian legal system has put in place **specific statutory safeguards** to ensure the authenticity and enforceability of such documents.

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At the heart of this framework lie **Section 14 of the Notaries Act, 1952**, and **Sections 85 and 57(6) of the Indian Evidence Act, 1872 (now Section 84 of Bharatiya Sakshya Adhiniyam, 2023)**. These provisions collectively govern when and how a power of attorney executed before a foreign notary public can be presumed to be validly executed and authenticated. Crucially, the recognition of foreign notarial acts in India depends on **reciprocal arrangements** notified by the Central Government. Without such recognition, foreign notarized documents may lack the legal foundation to be relied upon in Indian judicial proceedings. This article explores the statutory scheme that regulates the recognition of foreign notarized documents.

Legal Framework

Section 84 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA)

The legal presumption regarding the authenticity of a PoA is a cornerstone of this issue, Section 84 of the Bharatiya Sakshya Adhiniyam, 2023, addresses this by creating a legal presumption in favor of a PoA. The provision states: “The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.” This section provides a significant procedural advantage. It means that if a document appears to be a Power of Attorney and is authenticated by one of the specified authorities, a court will, as a matter of course, presume its validity without requiring further proof of its execution. This presumption is rebuttable, but it places the burden of proof on the party challenging the document. However, the crucial aspect of this provision is the list of authenticating authorities. When a PoA is executed abroad, the list includes an “Indian Consul or Vice-Consul” and a “representative of the Central Government,” which are explicitly recognized. A “Notary Public” is also mentioned, but its application to foreign notaries is not explicitly defined within this section. This is where the Notaries Act, 1952, comes into play.

Section 14 of the Notaries Act, 1952

The Notaries Act, 1952, governs the profession of notaries in India. Section 14 is the pivotal provision that deals with the recognition of notarial acts performed by foreign notaries. Titled “Reciprocal arrangements for recognition of notarial acts done by foreign notaries,” this section empowers the Central Government to establish a reciprocal arrangement with other countries. The provision states: “If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by notaries within India are recognised for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within India for all or any, as the case may be, limited purposes.” In essence, Section 14 lays down a condition for the recognition of foreign notarial acts in India. For a notarial act performed by a foreign notary to be legally valid in India, the country where the act was performed must be designated as a “reciprocating country” by the Indian government through a formal notification. This ensures that the recognition of notarial acts is a two-way street, based on the principle of reciprocity.

Case Law

The judgment passed by the High Court of Kerala[1], addresses the validity of a Power of Attorney (PoA) executed abroad. The case involved the petitioner, Margret @ Thankam, and the respondent, Joseph Mathew Chettupuzha. The suit was filed by a plaintiff (represented by a PoA holder) seeking a release deed and to have a gift deed declared void, with the PoA having been executed and authenticated in the State of Missouri, USA. The petitioner challenged the PoA, arguing that the notarial act could not be recognized because Missouri was not a "reciprocating country" under Section 14 of the Notaries Act, 1952. The court's decision hinged on the relationship between Section 85 of the Indian Evidence Act and Section 14 of the Notaries Act. The High Court ruled that the presumption of authenticity under Section 85 of the Evidence Act cannot be applied to a foreign notarized PoA unless the country is declared a "reciprocating country" through a notification under Section 14 of the Notaries Act. The court thus set aside the lower court's order which had accepted the PoA, clarifying that the Notaries Act provides a mandatory framework for the recognition of such documents, though it did allow the plaintiff to submit a new, duly executed PoA to continue the suit.The judgment effectively clarifies that simply having a PoA notarized abroad is insufficient; the country of notarization must have an official reciprocal arrangement with India.

Judicial Interpretation

- **Interplay of Statutes:** The Kerala High Court has clarified the critical interplay between Section 84 of the BSA and Section 14 of the Notaries Act. The court's judgment highlights that the general presumption under Section 84 of the BSA regarding a foreign-notarized PoA is not a standalone rule. This presumption is conditional and must be read in conjunction with the mandatory requirement of the Notaries Act.
- **Condition for Validity:** The court specifically held that for a PoA executed before a foreign notary to be legally valid and benefit from the presumption under Section 84 of the BSA, the country of execution must be one of the "reciprocating countries" as officially notified by the Central Government under Section 14 of the Notaries Act.
- **Distinction from Consular Authentication:** The court drew a clear distinction between a PoA authenticated by a foreign notary and one authenticated by an Indian diplomatic or consular officer abroad. While the latter is directly recognized under Section 84 of the BSA, the former is subject to the additional requirement of Section 14 of the Notaries Act.

Analysis

The legal issue revolves around the harmonious interpretation of Section 84 of the BSA and Section 14 of the Notaries Act. The Kerala High Court's ruling clarifies that the presumption under Section 85 of the Indian Evidence Act (now Section 84 of the BSA) regarding a foreign-notarized Power of Attorney (PoA) can only be invoked if the foreign country has been officially declared a "reciprocating country" under Section 14 of the Notaries Act. The court's view is that these provisions must be read together, preventing the unilateral recognition of foreign notarial acts and upholding the principle of reciprocity. This interpretation ensures a structured and legally sound process for recognizing foreign-executed documents. Consequently, for a PoA executed before a foreign notary to be considered valid in India, the country of execution must be a "reciprocating country." The legally sound alternative, if the country is not on this list, is to have the PoA authenticated by an Indian Consul, Vice-Consul, or a representative of the Central Government, as provided for in Section 84 of the BSA. This decision provides much needed clarity, creates a stronger and fraud-resistant system, and offers practical guidance for individuals executing PoAs abroad to ensure the document's legal validity and enforceability in India.

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[1] *O.P (C) No.3213 of 2018*

Frequently Asked Questions

Is a power of attorney executed before a foreign notary valid in India?

Not automatically. The recognition of a foreign notarial act in India depends on reciprocal arrangements notified by the Central Government, i.e. whether the foreign country is a recognised 'reciprocating country' under Section 14 of the Notaries Act, 1952.

What law governs the presumption of validity of a notarized power of attorney in India?

Section 85 of the Indian Evidence Act, 1872 (now Section 84 of the Bharatiya Sakshya Adhiniyam, 2023) creates a rebuttable presumption that a power of attorney executed before and authenticated by a notary public or specified authority was duly executed and authenticated.

When will an Indian court presume a foreign power of attorney to be valid?

The presumption applies reliably where the foreign notary's country has reciprocity notified by the Central Government under the Notaries Act; without such recognition, a foreign notarized power of attorney may lack the legal foundation to be relied upon in Indian proceedings and the presumption can be rebutted.

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