



DEBT RECOVERY

ENFORCEABILITY OF EXPARTE FOREIGN JUDGMENTS IN INDIA

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The Government of India on 17th January 2020 notified UAE as a 'reciprocating territory' for allowing enforcement of judgments passed by UAE courts in India. This notification is issued following execution of India-UAE Agreement in 1999 ("**Agreement**") for judicial cooperation in civil and commercial matters.

There is a wide spread perception in UAE that the *ex parte* judgment (judgment passed in *absentia*) passed by UAE courts cannot be enforced in India. This is an important issue considering the fact most of the UAE judgments pertaining to financial claims are *ex- parte* as the defendants were often absconding at the relevant time.

Inconclusive of Foreign Judgment

Section 13 of the Indian Code of Civil Procedure, 1908 ("CPC") lays down the circumstances under which a foreign judgment is not conclusive and hence not enforceable in India. Relevant provisions of the CPC dealing with inconclusiveness of the foreign judgments are as under;

"Section 13

When foreign judgment 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 recognise the law of ¹[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 ¹[India]."

The India-UAE agreement also provides for grounds under which decrees of respective country shall not be recognized or enforced. Relevant provisions under India-UAE Agreement ("**Agreement**") for judicial cooperation in civil and commercial matters are as under;

"Article XIX

Subject to the provisions of this Agreement, the courts of the State requested to recognise or execute a decree shall, when examining the grounds of jurisdiction exercised by the Courts of the other contracting State, be bound by the facts stated in that decree and on which jurisdiction is based, unless the said decree had been passed in *absentia*.

Article XX

A decree shall not be recognised or executed in the following cases:

[...]

c. or it has not been given on the merits of the cases;

[...]

i. or it is passed in *absentia* and the defaulting party was not duly summoned in accordance with the rules applicable in his country;

[...]

Article XXIII

The Central Authority of the Contracting Party requesting recognition or execution of a decree in the other Contracting Party, shall submit the following:

- a. an official copy of the decree.
- b. a certificate showing that the decree is final and executable, unless that is provided for in the decree itself.
- c. in case of a decree in *absentia*, an authenticated copy of the summons or any other document showing that the defendant was duly summoned.**
- d. if the request is only for execution of a decree, an official copy in properly executable form."

Perusal of Section 13(b) of CPC and the relevant provisions of the Agreement will clarify that a judgment is not enforceable where it has not been given on merits or where the judgment is obtained against the principles of natural justice or under fraud. Article XX (i) of the Agreement renders a judgment passed in absentia is unenforceable unless *'the defaulting party was not duly summoned in accordance with the rules applicable in his country'*. Article XXIII (c) of the Agreement clearly provides that where the decree enforceable is a *'decree in absentia'* the party who wants to enforce the judgment shall provide *'authenticated copy of the summons or any other document showing that the defendant was duly summoned'*.

The Bombay High Court considered the validity of exparte judgments (judgment passed in absentia) of foreign courts in the case of *Bank of Baroda vs Manubhai Jethabhai Patel & Others*^[1] and held that exparte judgment passed on merits after compliance with the procedure of the reciprocating country is enforceable. Judgment further held that:

“if the mere absence of the defendant could prevent a judgment given in his absence from being one on the merits of the case, then as observed in the case of Sheikh Abdul Rahim (supra), there would be every incentive for the defendant to be absent when the matter came up for disposal in the country where the suit is filed and then contend before the Court where the decree is transferred for execution that the decree is not on merits“

UAE judgments are generally passed on merits after complying with summoning process which include service of summons to the last known address under various modes including post, email etc and also by way of publication in case summons cannot be served through post. Thus, the exparte judgment of UAE courts which has been passed on merits, after duly complying with the service of summons procedure in UAE, is executable through Indian courts.

^[1] 2000 (1) BomCR 325