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Supreme Court Settles the Limitation Period Debate for Enforcement of Foreign Arbitral Awards in India



Law laid down by Supreme Court regarding limitation for enforcement of a foreign award under the Arbitration and Conciliation Act, 1996.

Over the years, several Indian High Courts have delivered conflicting judgments in respect of the limitation period applicable to proceedings for enforcement of foreign arbitral awards in India under Section 47 and 49 of the Arbitration and Conciliation Act, 1996 (“the Arbitration Act”).

The recent ruling of the Supreme Court (“SC”) in *Government of India v. Vedanta Limited & Ors.*^[1] has finally put this contentious issue to rest. The SC has held that proceedings for enforcement of a foreign arbitral award in India would be governed by the residuary provision of the Limitation Act, 1963 (“Limitation Act”) i.e. Article 137.^[2]

Judicial Background: Conflicting Views of The High Courts

Article 136 of the Schedule to the Limitation Act prescribes that the period of limitation for execution of any decree or order of a “civil court” is 12 years from the date on which such decree or order becomes enforceable. On the other hand, Article 137 (the residuary provision) provides that the period of limitation for any application where no period of limitation is provided in the Limitation Act, is three years from when the right to apply accrues.

Bombay High Court

In *Noy Vallesina Engineering Spa v Jindal Drugs Limited*^[3], a Single Judge of the Bombay HC held that the enforcement of a foreign award must take place in two stages. In the first stage i.e. enforcement, the enforceability

of the foreign award would be determined and this be governed by Article 137, Thereafter, in the second stage i.e. execution, the award would be executed as a deemed decree and this would be governed by Article 136 of the Limitation Act.

Several years later, in *Louis Dreyfous Commodities Suisse v Sakuma Exports Limited*^[4], another Single Judge of the Bombay HC took a different view that the enforcement of a foreign award would be governed by Article 137 of the Limitation Act.

Most recently, in *Imax Corporation v E-City Entertainment (I) Pvt. Limited*^[5] a Single Judge of the Bombay HC took yet another view that since a foreign award is regarded as a decree it can be enforced and be executable in the same proceeding and Article 136 of the Limitation Act would be applicable to such proceeding.

Madras High Court

The Madras HC in *Compania Navierai v. Bharat Refineries Ltd.*^[6], relying upon the Supreme Court's judgment in *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*^[7] held that Article 136 of the Limitation Act would apply to enforcement proceedings of a foreign arbitral award, as such award takes the form of a 'decree' to be executed.

Delhi High Court

On 19 February 2020, the Delhi HC in *Cairn India Ltd. v. Union of India* held that the provisions of Article 136 of the Limitation Act would apply to an enforcement petition of a foreign award. In the facts of that case, it held that, the application for enforcement was filed within the applicable limitation period i.e. 12 years from the date on which the award became enforceable. The decision of the Delhi High Court in *Cairn India Ltd. v. Union of India* (Impugned Judgment) came up for challenge in *GOI v. Vedanta Limited* (supra).

The recent ruling of the Supreme Court in Government of India v. Vedanta Limited & Ors. held that proceedings for enforcement of a foreign arbitral award in India would be governed by the residuary provision of the Limitation Act, 1963 i.e. Article 137.

Supreme Court Ruling

When the matter came up for consideration of the SC, the SC affirmed the judgment of the Delhi High Court confirming the order of enforcement passed under Sections 47 read with 49 for enforcement of the award, although for different reasons. The reasoning of the SC with respect to the issue of limitation is as under:

Period of Limitation Applicable – Article 136 or Article 137?

- The SC observed that the issue of limitation being procedural in nature, is subject to *lex foriee*. the law of the state where the foreign award is sought to be enforced. It observed that the Arbitration Act and the Limitation Act are silent on the limitation period applicable for enforcement of a foreign award.
- After discussing the divergent views of various High Courts, the SC held that Article 136 of the Limitation Act applies only to the execution of decree of a civil court in India and it cannot be made applicable to the execution of a foreign award. It observed that a foreign award is not a decree of an Indian Civil Court, and the legal fiction created under Section 49 of the Arbitration Act[8] is for the limited purpose of enforcement the foreign award.
- In this regard, the SC relied upon the ratio laid down in *Bank of Baroda v Kotak Mahindra Bank*[9], holding that Article 136 of the Limitation Act deals only with decrees passed by Indian courts, and would not extend to a foreign decree.
- In view of the above reasoning, settling the debate on the issue, the SC held that a petition for enforcement of a foreign award not falling under Article 136 would be covered by the residuary provision i.e. Article 137 of the Limitation Act prescribing a period of three years from the date "*when the right to apply accrues*".

Condonation of Delay

- Another question before the SC was whether delay in filing an application for enforcement of a foreign award can be condoned under Section 5 of the Limitation Act.
- It was contended on behalf of the Government of India that an execution petition for a foreign award (for the purposes of the Limitation Act) has to be treated as an application under the

provisions of Order XXI of the Code of Civil Procedure^[10]. Since Section 5 of the Limitation Act expressly excludes applications made under Order XXI of the CPC from its purview, it was contended that delay in filing such execution petition cannot be condoned.

- Rejecting this argument, the SC held that the Arbitration Act is a self-contained code. An application under Section 47 is not an application filed under any of the provisions of Order XXI of the CPC, and is a substantive Petition by itself. Consequently, a party may file an application under Section 5 for condonation of delay, while seeking enforcement of a foreign award and the bar under the said Section would not be applicable.

Conclusion

Thus, it is now settled law that an application for enforcement of a foreign award is governed by Article 137 of the Limitation Act, and shall be filed within 3 years from the date on which the right to apply accrues. Further, delay in filing such application, if any, may be condoned under Section 5 of the Limitation Act if sufficient reasons are shown for the same.

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[1] SC Judgment dated 16 September 2020 in Civil Appeal No. 3185 of 2020

[2] Article 137 prescribes a limitation period of 3 years from the date on which the right to apply accrues.

[3] (2006) 5 BomCR 155

[4] (2015) 6 Bom CR 258

[5] (2020) 1 AIR Bom 82

[6] AIR 2007 Mad 251

[7] (2001) 6 SCC 356

[8] Section 49 of the Arbitration Act provides– Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

[9] (2020) SCC OnLine 324

[10] Order XXI of the Code of Civil Procedure deals with execution of decrees.

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