

Supreme Court of India settles law relating to Limitation to enforce Foreign awards in India

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By way of a recent Judgment dated 16th September 2020 in the matter of Vedanta² Supreme Court of India settled the law relating to limitation to enforce foreign commercial arbitration awards in India. There were judgments from different high courts of India specifying different limitation periods for enforcement of foreign awards in India. Hence that was a requirement for the Supreme Court to settle the law in this matter.

The petitioner contended that since there is no specific provision in the limitation act for enforcement of foreign awards, it would necessarily fall under the residuary provision Article 137. The said article provides a period of 3 years from when the right to apply accrues. It was submitted that the right to apply accrues from the date of making the award. It was contended that since the award was passed on 18th January 2011 and the petition for enforcement was filed by the respondent on 14th October 2014 the petition was barred by 268 days beyond the period of limitation. It was further contended that the execution petition for the purposes of the limitation act has to be treated as an application under the provisions of Order XXI of CPC³. The execution of a foreign award under section 49 of the 1996 act⁴ is carried out under Order XXI of CPC as held in BCCI case⁵ and hence an application under Section 5 of the limitation act seeking to condone the delay is not maintainable.

A three judge bench of Supreme court of India, in Kerala state electricity case⁶ held that the phrase “any other application” in article 137 cannot be interpreted on the principle *ejusdem generis* to be an application under the Civil Procedure code. The phrase “any other application” used in article 137 would include petitions within the word “applications” filed under any special enactment. Hence, an application seeking to enforce a foreign arbitration award under S.47 of the Act is also covered by Article 137 of the Limitation Act, since Arbitration and Conciliation Act, 1996 is also a special legislation.

The Enforcement of a foreign arbitration award has two phases namely recognition phase and enforcement phase. In the recognition phase after hearing the objections of the Respondent, the High Court will decide whether the foreign award can be enforced in India. Once recognition is done by the High Court the foreign award becomes a deemed decree of the concerned High Court (as per the

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² Government of India Vs Vedanta Limited and others 2020 SCC Online SC 749

³ Code of Civil Procedure, 1909

⁴ Arbitration and Conciliation Act, 1996

⁵ BCCI Vs Kochi Cricket (P) Ltd 2018(6)SCC 287

⁶ The Kerala State Electricity Board Vs T.P.Kunhaliumma (1976) 4 SCC 634

amended explanation to Section 47 of 2016 amendment Act confers exclusive jurisdiction on the High Court for execution (how foreign awards) would be covered by the residuary provision i.e., Article 137 of the Limitation act.

More over Court held that the Arbitration and Conciliation Act,1996 is a Self-contained code and hence the application under section 47 is not an application filed under any provisions of order XXI of CPC, 1908. It further held that where the application filed before the appropriate High Court for enforcement which would take recourse to the provisions of order XXI of CPC only for the purposes of execution of the foreign award as a deemed decree. The bar contained in Section 5 which excludes an application filed under any provisions of order XXI of CPC would not be applicable to a substantive application filed under the Arbitration Act 1996 and hence an application seeking condonation of delay under Section 5 is maintainable in law.

Hence, the Supreme Court Bench consisting of Hon'ble Judges S Abdul Nazeer, Indu Malhotra and Aniruddha Bose settled the law of limitation with regard to enforcement of Foreign awards by holding that Article 137 of the Limitation Act will apply and application seeking condonation of delay under Section 5 of the Act is maintainable.