
(1966) 03 MAD CK 0043
In the Madras High Court
Case No : A.A.O. No. 286 of 1960

Ali	Vs	APPELLANT
Mohamed		RESPONDENT

Date of Decision : 18-03-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13, 47
Limitation Act, 1908 — Article 182, 183

Citation : (1966) 03 MAD CK 0043

Hon'ble Judges : Veeraswami, J;Natesan, J;Kunhamed Kutti, J

Bench : Full Bench

Judgement

Verraswami, J.—This civil miscellaneous appeal is directed against an order of he learned District Judge, East Tanjore at Nagapattinam and turns on whether there is any limitation and, if so, what is it for execution by that court of a foreign judgment of a superior court in a reciprocating territory. The District Judge held that Art. 183 of the Limitation Act 1908 was inapplicable but Art. 182 was. On the view that the starting point of limitation would be the date of the order of the appellate Court in such territory, he directed execution to proceed. He also repelled a contention that execution was barred under S. 13 of the Civil Procedure Code, but this question is no longer reiterated. For the appellant-judgment-debtor reliance was placed on Uthamram Vs. K.M. Abdul Kasim Co., and it was urged that on the principle of this authority, the execution petition should be held to be barred as the judgment of the foreign court had been obtained on 4-1-1954. Srinivasan and Ramakrishanan JJ. who heard the appeal were of the opinion that Uthamram Vs. K.M. Abdul Kasim Co., required reconsideration by a larger Bench.

(2) On 4-1-1954, the respondent obtained a judgment against the appellant in the Consolidated Civil Suits Nos. 53 of 1945 and 51 of 1950 on the file of the High Court at Penang for \$ 24,682-72 and cost which were taxed at \$ 5453-80. Pending an appeal of the appellant from that judgment to the Supreme Court of Federation of Malaya, the respondent made an application for a direction to the

appellant to furnish on or before 30-6-1954 security for the payment of taxed costs and a further security in a sum of \$ 1,000 towards costs of the appeal within the same period which was ordered on 31-5-1954. This order provided that unless the security was furnished within time, the appeal should be stayed. On the respondent's application, again the Supreme Court by an order dated 23-7-1954, extended the time upto 31-7-1954, for compliance. But this time the order stated that if the appellant should make default in giving such security by the date fixed, the appeal be dismissed with costs. The appellant defaulted with the consequence that the appeal stood dismissed on 31-7-1954. The respondent then applied for and obtained from the Supreme Court on 7-12-1954, a certificate of non-satisfaction of the judgment. No execution was levied against the appellant until 3-12-1959, when the respondent filed a certified copy of the foreign judgment together with the non-satisfaction certificate and an execution petition in the court of the District Judge, East Tanjore for attachment and sale of the appellant's properties. On 13-7-1960, the District Judge ordered attachment from which this appeal has arisen. In the meantime, on 19th February 1960, the respondent applied to the Supreme Court for a formal order striking out the appeal which was given on 23rd February 1960. When this appeal in the first instance was before Ramachandra Iyer C.J. and Venkataraman J. the learned Judges adjourned it on 10-1-1963 to enable the appellant to have the order of 23-2-1960 set aside. The appellant's application was disposed of by the Supreme Court on 21-10-1963 allowing it. While doing so, the Supreme Court set aside the earlier order dated 23-2-1960 and made it explicitly clear that the order of that court dated 23-7-1954 was the final order and by its operation the appeal stood automatically dismissed on 31-7-1954.

(3) The District Judge was not prepared to apply Art. 183 of the Limitation Act, as he was not satisfied that the High Court of Penang had been established by Royal Charter. But he took the order of the Supreme Court of Penang dated 23-2-1960, as the final order for the purpose of limitation, and, applying Article 182(2) held that the execution petition was not barred by limitation. In the appeal, it seems to have been argued before Srinivasan and Ramakrishnan JJ. as we see from their referring judgment, that the conclusion of Ramachandra Iyer C.J. and Anantanarayanan J. in *Uthamram Vs. K.M. Abdul Kasim Co.*, to the effect that the period of limitation, as prescribed by the Indian Limitation Act for execution of a decree by the District Court, would equally apply to a foreign judgment decree of the kind covered by the reciprocal arrangement, required reconsideration. The learned referring Judges indicated their view that the expression "as if it had been passed" in S. 44-A C.P.C. could not, in the context, be equated to "deemed to have been passed" which, as they thought, might attract larger incidence and that, if such enlarged construction were given and the decree were deemed to have been passed by the District Court as on the date on which it was passed by the foreign court, it would render the very reciprocal order wholly infructuous. The learned Judges, however, concurred with the view in *Uthamram Vs. K.M. Abdul Kasim Co.*, in so far as it held that Art. 183

was not applicable if the judgment sought to be executed in India was not one rendered by a court established by Royal Charter in the foreign reciprocating territory. Before us the arguments for the respondent did not proceed precisely on the lines which would appear to have been addressed to the referring Bench.

(4) Mr. K. Rajah Aiyar, who appears for the appellant, supports the view taken in *Uthamram Vs. K.M. Abdul Kasim Co.*, that Article 182 applies. He contends that the words "as if it had been passed by the District Court" in S. 44-A C.P.C. mean that a foreign decree for the purpose of execution on filing a certified copy thereof in that court, shall be deemed to have been passed by it on the date the decree originally bears and if it be the case, limitation should be computed from that date or in any case from 3-1-1956, when the Government of India notified declaring the federation of Malaya to be a reciprocating territory. Learned counsel argues that though S. 44-A does not by itself provide for limitation for execution, it is settled that by operation of International Law, the Indian Limitation Act, as part of procedure, will govern and apply to execution locally of foreign judgment. He submits that Art. 182 is the proper Article and that if that is not so, Art. 181 applied, the starting point for limitation being the date on which the non-satisfaction certificate was obtained by the respondent from the foreign court whence according to Mr. Rajah Iyer the right to apply for execution accrued. On the other hand, Mr. V.K. Thiruvengkatachariar for the respondent urges that whatever be the effect of the words "as if it had been passed" in S. 44-A and assuming that the law of limitation, as part of procedure, applied to execution proceedings in the executing courts in India, there is thing in S. 44-A or its legislative history or any other provision of Indian Law to warrant the view that the Indian Limitation Act will apply to execution of a foreign judgment even before it had been filed in a District court in India. He also contends that, in any case, the proper article which is applicable is Art. 183 and that if that be not so, on the same logic, neither Art. 182 will be applicable, so that one is left with Art. 181. He would, however, recognise that to be consistent with the principle of reciprocity; it would be open to a judgment-debtor to show under S. 47 C.P.C. to the executing court in India, that between the date of the non-satisfaction certificate in relation to the foreign judgement and the date of its filing in and execution by that court, the foreign judgment or decree became barred by limitation in the country of the origin or otherwise stood partly or wholly satisfied or discharged.

(5) We take it as incontrovertible under the common law that a foreign judgment or decree does not operate *proprio vigori* in this country and is not capable of automatic execution by the Indian Courts. S. 2 C.P.C. defines a foreign judgment as one of a foreign court, which obviously is a court situate outside the limits of India and has neither been established or continued by the President of the Indian Union nor has authority in India. While a decree of an Indian court is enforced by proceedings in execution, a foreign judgment, until the enactment of Ss. 44 and 44-A of the Code, could only be enforced by a suit upon that judgment, subject, however, to the provisions of S. 13 of the Code. But the

Indian courts are not bound in every case to take notice of a foreign judgment in a suit to enforce it and it is always open to them to decline to recognise it on grounds of policy. Art. 117 of the Indian Limitation Act prescribed a period of limitation for institution of a suit to enforce a foreign judgment, namely, six years from the date of such judgment.

(6) Before we refer to certain exceptions to the common law rule of inexecutability of foreign judgments by the Indian Court except by an action, introduced in the CPC in stages, it will be useful to notice the position in the United Kingdom of foreign judgments or decrees.

The judgments Extension Act, 1868, was the first in point of time to be enacted by the British Parliament which made certain Judgments of the Superior Courts of Scotland and Ireland effective in the United Kingdom. Before the Act, the only way to enforce such judgments in the United Kingdom was by institution of suits on them. After the Act, the executability of such judgments in the United Kingdom was permitted on a system of registration with the British Courts by means of a certificate that the particular judgment had been obtained in a Superior Court in Scotland or Ireland. The foreign judgment, when so registered, was regarded as extended judgment for purposes of execution by was made subject to certain restrictions. Next came The Administration of Justice Act 1920, which extended the facility of execution in the United Kingdom of foreign judgments to such judgments obtained in a superior court in any of the British Dominions. The judgment-creditor within 12 years in England or Ireland for registration and the High Court in England or Ireland for registration and the High Court in its discretion could allow or refuse the application. The registration was, therefore, not as of right unlike under the earlier Act of 1868. Further the 1920 Act provided for certain conditions or restrictions for registration some of which were analogous to those mentioned in S. 13 C.P. Code in this country. Once a foreign judgment of a Dominion was registered at the British High Court, it was regarded to have the same force as if it had been initially obtained in the registering court. The Act of 1920 allowed registration only if its provisions had been extended by an Order-in-Council to the Dominion in which a superior court passed the judgment. Registration was thus based on reciprocity. In 1933 the Foreign Judgments(Reciprocal and Enforcement) Act came into force, the effect of which was to extend the provision for registration to foreign judgments of superior courts in foreign countries even outside the Dominions. But the extension was to be by Orders-in-Council and on a reciprocal basis. Provisions are found in the Act which enable a person, who holds a final and conclusive foreign judgment in his favour of a Superior court in a reciprocating territory, to apply to the High Court in England for registration within six years of such judgment. The High Court was no longer left with the discretion to decline the registration. The provision for registration was confined to foreign judgment for recovery of money. On certain grounds specified in the Act, liberty was given to the person, against whom the judgment was given, to have the registration set aside. The effect of registration under the Act would appear to be that the foreign

judgment registered would, for the purpose of execution, be of the same force and be subject to the same control, as if it had been originally given in the registering court and that further no action in England would lie on a foreign judgment which was entitled to registration.

(7) In British India there was originally no statutory or other provision conferring jurisdiction on Indian courts to enforce foreign judgments in execution. On 27-2-1924, a bill was introduced in the Central Legislature to provide for enforcement in British India of judgments obtained in the United Kingdom or other notified parts of His Majesty's Dominions, as part of a reciprocal arrangement by which the provisions of Part II of the Administration of Justice Act, 1920, were to be extended to the British India. But the Bill was dropped in 1925, on the ground that full reciprocity could not be ensured as most of the British Indian courts of unlimited civil jurisdiction would not possibly be viewed as superior courts as contemplated by the Administration of Justice Act 1920. But the position became different by the passing of the foreign judgments(Reciprocal Enforcement) Act 1933, which provided for the extension of part I of the Act to His Majesty's Dominions outside the United Kingdom by the order in Council and also left it to the order in Council to specify the courts which should be deemed as "superior" within the meaning of the Act. The Lord Chancellor having expressed his no objection to the British Act being applied to all Indian Courts possessing unlimited original civil jurisdiction, S. 44-A was inserted in the CPC by S. 2 of the C.P.C. (Amendment) Act of 1937. The section as then enacted read:--

"44-A Where a certified copy of a decree of any of the superior courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in British India as if it had been passed by the District court.

Explanation 1: "Superior courts" with reference to the United Kingdom, means the High Court in England, the court of Sessions in Scotland, and High Court in Northern Ireland, the court of Chancery of the County Palatine of Lancaster and the court of chancery of the County Palatine of Durham.

Explanation 2: "Reciprocating territory" means any country or territory, situated in any part of His Majesty's Dominions or in India which the Governor General in Council may, from time to time, be notification in the Gazette of India, declare to be reciprocating territory for the purpose of this section; and "superior courts" with reference to any such territory, means such courts as may be specified in the said notification."

To the section was added a further "explanation" setting out the meaning and scope of a decree with reference to a superior court. In view of the constitutional changes in 1937. Later (Adapataion of Indian Laws) Order 1937. Later in 1952 by an amending Act of that year, the section was recess and in its present form, it is as follows:

"44-A(1) Where a certified copy of a decree of any of the superior courts of any

reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District court;

(2) Together with the certified copy of decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree had been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of S. 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District court, executing a decree under this section, and the District court shall refuse execution of any such decree, if it is shown to the satisfaction of the court that the decree falls within any of the exceptions specified in clauses (a) to (f) of S. 13.

Explanation 1: "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "superior courts" with reference to any such territory, means such courts as may be specified in the said notification.

Explanation 2: "decree" with reference to a superior court means any decree or judgment of such court under which a sum of money is payable not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgement."

Reciprocity within India under that section was, however, not established until 3-1-1956, when the Central Government, by a Notification of that date, declared the Federation of Malaya to be reciprocating territory and the High Court and the courts of appeal of that Federation to be the Superior Courts of that territory for the purpose of S. 44-A C.P.C. It appears there was in force in the Federation of Malaya what was called the Reciprocal Enforcement of Judgments Ordinance 1949, enabling the Government of Malaya, to extend its provisions to particular foreign territories. On 13-9-1955, in exercise of his powers under S. 5 of the Ordinance, the High Commissioner for Malaya extended its provisions to judgments obtained in a superior court in India as it extended to judgments obtained in a superior court in the United Kingdom. The effect of the enabling provisions and the orders of the relative Governments referred to is that the judgments obtained in the superior courts of each of the reciprocating territories became enforceable in the other, subject of course, to the restrictions, conditions and limitations in the *lex fori* in the executing territory.

(8) S. 44-A C.P.C. read with the notifications made thereunder compendiously but exhaustively provides not only for the executability in India of a foreign judgment in a reciprocating territory but also the procedure to be followed in execution. The jurisdiction to execute a foreign judgement is entrusted to a District court and arises with the filing in such court of a certified copy of a decree of any of the Superior courts of the reciprocating territories. On such

filing, the decree of the foreign court becomes executable in India as if it had been passed by the District Court. The term "district" is defined in the Code to mean the local limit is of the jurisdiction of a principal civil court of original jurisdiction which is called a "District Court" and includes the local limits of the ordinary original civil jurisdiction of a High Court. The expressions "foreign Court" and "foreign judgment" are also defined by the Code. The former means a court situate outside India and not established or continued by authority of the Central Government and "foreign judgment" is a judgment of a foreign court. Though S. 44-A(1) of the Code speaks of a decree of a foreign court, it may be taken that as it means by at the formal expression of an adjudication, it includes a judgment of a superior court of a reciprocating territory in accordance with which no formal decree is drawn up under the procedure applicable to it. In fact, this is made clear by the second Explanation to the section. But the judgment should be one, so far as the court entering it, which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. Further for the purpose of S. 44-A, a decree or judgment as is seen from the second Explanation, is not any decree or judgment of a superior court in the reciprocating territory but is confined to a decree or judgment for money. Even then, the money payable under the foreign decree or judgment should not be one in respect of taxes or other charges of a like nature or of a fine or other penalty. There is also a further restriction, namely, an arbitration award; even though it may be enforceable as a decree or judgment is not enforceable within the purview of S. 44-A.

Sub-sections(2) and (3) of S. 44-A contain the procedure to be adopted in execution of decree or judgments passed by courts in reciprocating territory, Sub-section(2) further contains a rule of evidence. Together with the certified copy of a decree should be filed a certificate from the relative superior court in the reciprocating territory showing the extent to which it has been satisfied or adjusted and such certificate is conclusive proof of the extent of satisfaction or adjustment. This only means, the executing court cannot go behind the certificate and embark on an enquiry on the extent of satisfaction or adjustment of the decree as on the date of the certificate. It would impliedly follow that it is open to a party in an executing court in India to show that the foreign decree or judgment has since been satisfied or adjusted. This is a matter relating to execution, discharge or satisfaction of the decree or judgment and in fact S. 44-A(3) which applies S. 47 to execution as from the filing of the certified copy of the decree in a district court enables that court to decide such question. As we said, a foreign judgment has no force except in the country of its origin. As under the Anglo-Saxon Jurisprudence, so in this country, certain restrictions operate on the recognition and effect to be given to a foreign judgment either in an action based on it or in its execution under the enabling statutory provision. These restrictions are matters of public policy, legislative and judicial. Such restrictions are to be found listed by Section 13 C.P.Code. These restrictions are extended by S. 44-A(3) to the execution of a foreign judgment. Where such restrictions apply,

the District court is perforce to refuse execution of the foreign decree.

(9) The rival arguments before us raise the following question: (1) Does S. 44-A provide not merely for the manner of execution of a foreign judgment but also the period of limitation for it? (2) Is there any period of limitation for filing a certified copy of a foreign judgment and (3) what is the Article of the Limitation Act 1908, that is applicable to execution of such a judgment? On the first question, a twofold argument, in the alternative, is addressed to us for the appellant. One is based on the effect to be given to the words "as if it had been passed by the District Court" in S. 44-A(1). The contention is that by those words the foreign judgement shall be deemed for the purpose of S. 44-A to be a judgment of the District court and that, as a necessary corollary, the period of limitation applicable to execution of its decree is automatically attracted. This view has the support of *Uthamram Vs. K.M. Abdul Kasim Co.*, . The other part of the argument is that limitation is a part of procedural laws and that since under the International law, *lex fori* governs execution of a foreign decree or judgment, the Limitation Act 1908 applies to execution. This argument again was accepted in *Uthamram Vs. K.M. Abdul Kasim Co.*, as an additional reason for the view that execution in that case was barred by time.

(10) The words "as if it had been passed by the District Court" undoubtedly create a fiction whether they are construed in the deeming sense, treating the foreign decree for purposes of S. 44-A as a decree passed by the District court or in a sense not having that effect by only indicating a fiction of a lesser scope just enabling the District court to apply to execution the manner of procedure indicated by S. 44-A. As to the effect of the words, *Uthamram Vs. K.M. Abdul Kasim Co.*, expressed the view:

"It would *prima facie* follow particularly having regard to the fact that Limitation Act does not provide any special period of limitation for execution of decrees of foreign courts, that the period of limitation applicable to such cases would be the same as that which would apply for execution of a decree of the District court, namely, Art. 182. There is no provision in the CPC or Limitation Act specifically providing for a period of limitation for execution of the decree of a foreign court. On the other hand, S. 44-A itself says that such a decree shall be execute in the State as if it had been passed by the courts in the State. The words of the section are comprehensive enough to treat the decree itself as a decree of a court in the State, and they need not be confined so as merely to confer on the court the powers which it would exercise in executing its own decree."

(11) The concluding sentence in the above extract shows that the learned Judges in that case considered that in their opinion those words in S. 44-A(1) treated the foreign decree itself as a decree of a court in India and that means the words automatically, by their own force, attract and apply the Indian Limitation Act, 1908, to execution of a foreign decree just in the same way as in the cae of a decree passed by the District court. The Court referred to *East End Dwelling Co. Ltd. v. Finsbury Borough Council* 1952 AC 109 and *Commissioner of Income Tax,*

Delhi Vs. S. Teja Singh, , which held that if a statute directs an imaginary state of affairs to be taken as a real, one should imagine also as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it and not boggle with one's imagination when it comes to the inevitable corollaries of the state of affairs imagined as real. Applying this principle, the court opined that it followed that the court must assume, for purposes of S. 44-A "that the District court had actually passed the decree". Having said that, the learned Judges proceeded at page 419 (of Mad LJ): (at p. 226 of AIR):

"If so much is assumed, the question then is only one of interpretation of the provisions of the Limitation Act and Art. 182, which refers to execution of decrees by the civil courts will in our opinion automatically apply. That provision will apply to all cases of execution petitions filed under S. 44-A C.P.C. whether the foreign court which gave the judgment was a Chartered High Court or any other superior court. In this view it is unnecessary to consider the applicability of Art. 181 of the Limitation Act. The execution petition in the instant case must therefore be held to be barred by limitation".

Let us examine the facts in that case. That was a case of an application under S. 44-A to the court of the District Judge of West Tanjore for execution of a judgment of the High Court of the Colony of Singapore. The judgment was entered on 2-10-1953 and there was a supplemental judgment delivered on 25-5-1954. The judgments were for payment of money and they were partly satisfied. One of the judgment-debtors owned considerable properties in this country. On 16-8-1958, sometime prior to his adjudication as an insolvent by the High Court of Singapore, the judgment-creditor filed an application in the District Court, West Tanjore for execution by attachment and sale of the debtor's properties in this country. The petition was not accompanied by a certificate from the High Court of Singapore showing the extent of non-satisfaction. The District Judge dismissed the application on the ground that the judgment-creditor on account of the adjudication of the debtor in Singapore was not entitled to execute the decree there and so too in this country on that account and that further the application was barred under Art. 182, of the Limitation Act. On appeal by the creditor, the learned Judges constituting the Division Bench posed two questions for their decision: (1) Whether the non-submission of a certificate from the Superior Court at Singapore showing the extent to which the decree was still outstanding would be a bar to the maintainability of the execution petition and (2) whether the execution petition was barred by limitation. They answered both the questions against the appellant-creditor. In doing so, they repelled a contention that Art. 183 was the Article to apply. It is on the view that the words "established by Royal Charter" in that section can refer only to such courts established in India and not to any court albeit established by Royal Charter outside its territory. We shall advert to this aspect of the matter when we consider that the third question we have formulated for our decision. It is obvious from the facts in that case and the view of the learned Judges, that the

application there was barred by limitation. In their judgment, the effect of Section 44-A(1) was that the judgment of the High Court, which was entered on 2-10-1953 and 25-5-1954 should be treated as one passed by the District Court of West Tanjore on those dates and that, therefore, the application for execution filed on 16-8-1958, more than three years from the date of the judgment was barred under Art. 182.

(12) With due respect to the learned Judges, we are unable to accept their view as to the scope and effect of S. 44-A and the applicability of the period of limitation to execution in India of foreign judgments in exactly the same manner as to execution of a decree passed by the executing court itself. In our view, S. 44-A has nothing to do with limitation and is merely confined to an extended application of the procedure provided for the manner of execution of a decree passed by any civil court in this country to execution by an Indian District court of a foreign judgment of a superior court in a reciprocating territory.

(13) When a statutory provision creates a fiction, it is first necessary to find out the purpose for which it was created, in order to understand the scope and implication of that fiction; *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, . In that case the Supreme Court quoted with approval the following principles from *In re, Coal Economising and Gas Co.*, (1875) 1 Ch D 182.

"Where the legislature provides that something is to be deemed other than it is, we must be careful to see within what bounds and for what purpose it is to be so deemed."

The purpose of the fiction in S. 44-A(1) will be clear from an examination of the general sections relating to execution in Part II of the C.P. Code. S. 37 defines a court which passed a decree. The expression, in relation to execution of decrees means the court of first instance which, in the exercise of its original jurisdiction, passed the decree and the expression is understood in the same sense even if the decree to be executed has been passed in exercise of appellate jurisdiction. The next section says that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. The court which passed a decree may under S. 39 on application send it for execution to another court if certain conditions specified therein are satisfied. The court which passed the decree may also of its own motion send it for execution to any subordinate court of competent jurisdiction. S. 40 provides for transfer of decrees made by courts in one State to courts in another State for execution. Under S. 42, the court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. Clearly, as it appears to us, the words "as if it had been passed by itself" in S. 42 have no more effect than indicating that the executing court, in executing a decree transferred to it, shall have the same powers of execution as the court which passed the decree. The words are confined to the manner of execution and do not suggest that they have any implication relating to limitation for execution. Similar words occur in S. 44 which

relates to execution of decrees of revenue courts in place to which the Code does not extend. The scheme of the sections relating to execution is that a decree is executed either by the court which passed it or the court to which it is transferred, for execution and in the latter case, the transferee court will have the same powers of execution as the court which passed the decree possesses. That is all the meaning of the words "as if it had been passed" in the sections we have referred to, But these provisions have no application to execution of foreign judgments. They are not and cannot be transferred to an Indian court for execution. Nor do the courts in India exercise the same powers of execution as a foreign court in the reciprocating territory possesses.

(14) The whole purpose of the words "as if it had been passed by the District court" in S. 44-A(1) clearly, in the context of the preceding sections, appears to be to determine or fix the particular District court in India to execute the foreign decree or judgment and attract to its execution by such court the manner of procedure that governs execution of its own decree. The purpose and ambit of the fiction go no further. In fact, it is impossible to equate the District court to an original court in relation to the foreign decree or judgment. The District court, in which a certified copy of the foreign decree had been filed has no control over that decree itself and all that it can do is to execute in accordance with its procedural laws and regulations. For instance, a District court cannot amend the foreign decree or even hear any argument impugning it. Nor, as we already mentioned, can it transfer the certified copy of the foreign decree filed with it to another court for execution. The District court will have no power to review the foreign judgment on any ground. It may be also visualised that simultaneous execution of the foreign decree in different courts in different countries constituting reciprocating territories cannot be ruled out.

(15) Further, we can find no justification in the language of S. 44-A(1), for the assumption that the decree should be taken to have been passed by the District court even on the date it was originally passed by the foreign court. Such an assumption will lead to surprising results and anomalies. This very case under consideration will demonstrate it. In the light of the facts, it will mean that even before reciprocity was established between the two Governments in January 1956 and the certified copy of the foreign decree was filed in the District court in 1959, the District Court had passed the decree. The fiction under S. 44-A(1) does not, in our opinion, extend to that effect, for unless the laws of this country explicitly so direct, a foreign decree can have no force in this country and that too from a date prior to such laws were made or reciprocity was established thereunder. In England, as we saw, registration of a foreign judgment should be made within a specified period from the original date. But there is no such provision to be found in the Civil Procedure Code. In the absence of such a provision or any indication by any other law in this country, it seems to us not possible to hold that S. 44-A(1) has addressed itself to so any limitation and provided that the foreign decree, when filed in the District court, should be taken to have been passed by it on the date it was passed by the original court.

(16) As a matter of fact, the CPC itself, generally speaking, does not include the law of limitation. Referring to the Code of Procedure (Act VIII of 1859) the Right Hon. Sir James Colville, speaking for the Judicial Committee in *Kristo Kinkur Roy v. Raja Burrodacaunt Roy*, 14 Moo Ind App 465 at p. 486 (PC) expressed the view:

"But that Code did not touch the subject of limitation, which continued to be regulated by Act XIV of 1859."

That is still the position under the CPC 1908 and the subject of limitation is dealt with separately by the Indian Limitation Act 1908. In a sense, procedure need not also necessarily include limitation. See for instance *Solar Works Vs. Employees* State Insurance Corporation and Another, . In *Morlays (B"Ham) Ltd. Vs. Roshanlal Ramsahai and Another*, a learned Judge of the Bombay High Court held that the words "as if" were used in S. 44-A(1) to make the whole scheme of O. XXI applicable in respect of execution of decrees of foreign courts and that the words had no wider meaning. This precisely accords with our view.

(17) For the appellant, however, reliance has been placed on certain decisions in support of the contention that the words "as if" also takes in limitation. In *Belvedere Jute Mills Ltd., Chaitram Sagormull Vs. Hardwarimull and Co., , Rankin C.J.* with whom Mitter J. agreed, held that as S. 15 of the Arbitration Act 1899, directed that an award on begin filed in a court in accordance with the earlier provisions should be enforceable as if it was a decree of that court it was not only enforceable as if it were a decree in general but the award having been filed in a particular court should be enforceable as if it were a decree of that court, That meant that the words employed by S. 15(1) were intended to go to the question of limitation as well as the question of procedure. The learned Judges had in mind the contrast between the words employed by S. 15(1) and the words in S. 12 of the English Arbitration Act, 1889, namely, an award may by leave of the Court be enforced intrude same manner as a judgment or order to the same effecte and felt that S. 15(1) of the Indian Arbitration Act 1899, expressed itself much more widely. But the learned Judges themselves referred to S. 42 C.P.Code, the language in which was that the court executing a decree sent to it should have the same powers in executing that decree, as if it had been passed by it and expressed the view that the section merely dealt with the powers of the court executing it and only either these powers, so that there could not be verly much doubt that the question of limitation was excluded from the purview or that section. They considered that the question of limitation was not merely a question of power. We respectfully agree with this reasoning which, in our opinion, applies to the construction of S. 44-A(1) too.

Nadirshaw v. Gajraj, AIR 1942 Bom 34 was again a case under S. 15 of the Arbitration Act, 1899. *Beaumont C. J.* and *Kania J.* were of the view that as the section spoke of an award to be enforceable as if it were a decree of the court, the expression should he read as including both the manner of execution and the time within which execution should take place. This decision like the Calcutta one

does not assist the appellant. Apart from what the Calcutta High Court said in regard to S. 42 of the Code, neither of these decisions related to a foreign decree or judgment. The CPC is confined to the Procedure to be followed by civil courts in this country in proceedings before them and the Indian Limitation Act applied only to proceedings by suits, appeals or applications in Indian Courts.

(18) It has been argued for the appellant that by the rules of the International Law, when a foreign judgment is executed in a local court by virtue of enabling provisions, the procedure applicable to the proceedings is the *lex fori* and that procedure includes limitation. The argument to that extent is undoubtedly correct. Dicey's Conflict of Laws 6th Edn. at page 859 sets out the rule:

"All matters of procedure are governed wholly by the local or domestic law of the country to which a court wherein an action is brought other legal proceeding is taken belongs. The term "procedure" is to be taken in its widest sense and includes, *inter alia*, remedies and process, evidence, limitation of an action or other proceeding and set off or counter-claim."

The Author points out where limitation involves substantive rights of the parties, it is excepted from the rule, It seems the English lawyers give the widest possible extension to the meaning of the term "procedure" as including all legal remedies and everything connected with the enforcement of a right, not involving the determination of the nature of the rights. We think that the position is the same in this country as well.

In *Peirce Leslie and Co. Ltd. Vs. E.J. Perumal alias Kochu Papi*, three learned Judges of this Court including the then Chief Justice, held that an application to a British Court in India to send a decree of such court for execution to a court of Travancore was neither an execution application nor a step in aid of execution within Art. 182(5) of the Limitation Act, 1908. This is on the view that the execution contemplated by the CPC under Art. 182 was execution by British courts in India on application made to such courts. *old field J.* said that the application could not be said to be a step in aid, because although it was made to the proper court, it was not in accordance with the law and that it was not sufficient that it was in accordance with the foreign law administered by the court where execution proceedings were to be taken. The learned Judge stated the principle to be:

" "the law of limitation is a law relating to procedure having reference only to the *lex fori*" and that no court is obliged to depart from its own notions of judicial order from mere comity to any foreign nation" "

Cheshire in his *Private International law*, 6th Edn., also says that execution of a foreign judgment in a local court will be governed by the procedure that obtains in the *lex fori*, and therefore, any relevant statute of limitation may be pleaded in defence while a statute of some foreign law, even though it belonged to the proper law of the transactions must be disregarded. The same author further points out at page 686:

"an English statute of limitation is a good plea to an action brought in England notwithstanding that the action is still maintainable according to the proper law of the transaction. Thus in *British Linen Co. v. Drummond*, 1830 10 B & C 903 the English period of six years was applied to an action on a Scottish contract, although the time within which the action might have been brought in Scotland was forty years.....the extinction of the right of action by the proper law of the transaction is not a bar to an action in England. In other words if the permissible period is longer in England than in the foreign country the plaintiff is at liberty to sustain his action here. Moreover, this is so, even though the foreign court has already adjudged the action to be barred in its own country."

We, therefore, accept the proposition that by International law, execution of a foreign judgment is governed by procedure in the *lex fori* and that the law of limitation, where it does not concern the nature of the right, is procedural. But we are unable to accept the future proposition that, though a foreign decree may be barred or unenforceable in the country of its origin it can nevertheless be enforced in the Indian court where a larger period of limitation obtains in relation to a similar judgment passed by it. To do so will be contrary to the basic requirements of reciprocity. Reciprocity in the context means that Indian Court will execute foreign judgments of Superior Court in the reciprocating territories in the same manner as if they were their own decrees and vice versa. It follows from the principle of reciprocity that if a foreign judgment is barred by limitation in the country of its origin and is, therefore, unenforceable, it cannot possibly be enforced in the Indian executing Court on the ground that a larger period of limitation is available there. Reciprocity applies to enforceable decrees in the country of their origin. Subject to this, since *lex fori* governs execution, if under the Indian Law, the decree is barred, the judgment-debtor can successfully plead it in defence.

(19) To sum up of our conclusions, we are of the view that S. 44-A(1) is confined to the powers and manner of execution and has nothing to do with the law of limitation. The fiction created by the sub-section goes no further and is not for all purposes, but is designed to abstract and apply to execution of foreign judgments by the District Court its own powers of execution and the manner of it in relation to its decrees, without reference to limitation. It follows that the contrary view expressed in *Uthamram Vs. K.M. Abdul Kasim Co.*, is, in our opinion, not correct. The law of limitation as contained in the Limitation Act, as procedural law and as *lex fori*, will, however, apply, independently of S. 44-A, to execution in India of a foreign judgement of a superior court in a reciprocating territory., But the effect of its application is a different thing which is a matter of construction and which will be considered elsewhere in this judgement.

(20) We now pass on to consideration of the second question. From our earlier observations it should be clear that the fiction in S. 44-A(1) does not, in any way, affect the original date of the foreign judgment when filed in a District Court in India. There is no indication in the section that the date of the foreign judgment

should be taken to be anything but the original date. But can it be said the Indian Limitation Act applies to it even from that date? Neither S. 44-A nor the International Law relating to foreign judgments and their execution in the local courts provides an answer. But there can be only one answer, as we think namely that it does not. The jurisdiction of a District Court in this country to execute a foreign judgment raised from and exercisable by the filing of a certified copy of the foreign decree or judgment. It is only thereafter, and never until then, the procedural laws as *lex fori* will be attracted to execution. The Indian Limitation Act can possibly apply to such execution only after filing a certified copy of the foreign decree or judgment as required by S. 44-A(1).

It is argued for the appellant that since sub-sec. (2) of S. 44-A requires a non-satisfaction certificate from the foreign superior court to be filed together with a certified copy of the decree of such court, compliance with that requisite is a condition precedent to invoking the jurisdiction of the District Court of execution of the foreign decree of judgment and that, therefore, the right to apply for execution arises the moment the foreign court issues a non-satisfaction certificate. We are unable to accept this contention on two grounds. The first is what we just now referred to, that before the filing under S. 44-A(1) the Indian Courts will have no jurisdiction to execute the foreign judgments and before that event, there of there is no possibility of the application of the Limitation Act to foreign judgments. The second is that sub-sec. (1) of S. 44-A does not require the filing of a non-satisfaction certificate as a condition for the District Court to assume jurisdiction. Sub-section(2) of that section does not pertain to jurisdiction but is in our view procedural; it contains besides a rule of evidence as to the conclusiveness of the certificate in the specified respect. We are, with respect, unable to agree with *Uthamram Vs. K.M. Abdul Kasim Co.*, which held that unless a non-satisfaction certificate is filed together with a certified copy of the foreign decree, the mere filing of a certified copy of the foreign judgement or decree alone will not vest the District Court with jurisdiction to execute.

(21) It is next to be considered whether there is any limitation for filing a certified copy of a foreign decree or judgment under S. 44-A(1). Though such filing is like registration under the English procedure, there is no provision in India, unlike in the united Kingdom, which specifies any period of time within which the filing should be done. Further filing is not an application and is not even a step in aid of execution. It is but a ministerial act which in terms of the statutory provision give series to the jurisdiction of the District court concerned and makes it competent to apply its powers of execution according to the law applicable to such court to the execution of a foreign decree or judgement. The Limitation Act applied only to suits, appeals and application. In *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 the Judicial Committee of the Privy Council held:

"Unless the application with the Liquidators made on the 26th March 1928, was a "suit instituted" or an "application made" for which a period of limitation is

prescribed by the first schedule, no question of limitation in regard thereto can arise."

There is no such provision in the First Schedule to the Limitation Act treating the filing under S. 44-A(1) as an application and providing limitation therefor. An application normally contains a prayer for some kind of an order or relief of interlocutory character or some times even a final order. Filing under S. 44-A(1) by itself will not enable the court to execute, for it contains no prayer in that regard. The party, who seeks execution of a foreign judgment, has after filing a certified copy thereof to apply under O. XXI R. 11 of the CPC for execution and it is only then the executing court can proceed. *Haji Ebrahim Kassam Cochinwalla Vs. Northern Indian Oil Industries Ltd.*, held that filing of an award by an Arbitrator was a ministerial act and not a judicial or quasi-judicial act of the Arbitrator. *Mukherji J.* in that case followed an earlier judgment of the Calcutta High Court in *Anandi Lal v. Keshavdeo*, AIR 1949 Cal 549: ILR 1945Cal 526. On that view Art. 178 of the Limitation Act will have no application for filing of an award by an Arbitrator under S. 14(1) of the Arbitration Act, 1940. That was the decision by a Division Bench of this court in *Dasaratha Rao v. Ramaswami Iyengar* 1955 2 Mad LJ 693: AIR 1956 Mad 134. *Govinda Menon and Basheer Ahmed Sayeed JJ.* observed:

"All provisions of limitation are intended to prescribe a period for taking steps by a party who has perforce to have recourse to a court of law for getting relief. The arbitrator is not in that position. His situation is analogous to that of an adjudicator resembling a court and unless the provisions of the Limitation Act expressly provide a period of limitation for any act to be performed by him, it is unreasonable to impute any intention to the legislature, that an article of the Limitation Act should control his actions. That Art. 178 is applicable only to parties and not to arbitrators has been decided already by other High Court.

(22) Though this reasoning may not precisely apply to the filing under S. 44-A(1) and the analogy between S. 14(1) of the Arbitration Act and S. 44-A(1) of the Code is not close, broadly speaking, the filing for the purpose of S. 44-A(1) is not a judicial act as an application for which a period of limitation is provided, but is a ministerial act which the statute requires to be done so that the District court may be seized of jurisdiction to execute a foreign judgment. There is also another reason why we must hold that there is no period of limitation for filing a certified copy of a foreign judgment. The procedural laws in respect of the executing court are applicable to execution of foreign judgments only on and from the date of the filing under S. 44-A(1) and it follows that in the absence of a specific provision in the Limitation Act, no question of limitation will arise for filing. Further, as we already mentioned, filing will not, by itself, give the right of execution, for it will; be open to the judgment-debtor under S. 44-A(3) to prove that the foreign decree is inexecutable in the country of its origin. This liberty is also inherent, as we are inclined to think, in the very concept of reciprocity for purposes of execution. We are of the view therefore, that no question of

limitation arises before or for filing under S. 44-A(1) of the Code.

(23) That takes us to the last question as to what is the proper Article applicable to execution in India of foreign judgment. On this matter, we are in complete agreement with reasoning and conclusion in *Uthamram Vs. K.M. Abdul Kasim Co.*, that Art. 183 will be inapplicable. We do not, therefore, propose to reiterate the reasoning and cover the same ground. We may, however, briefly state that the difference in the period of limitation applicable for execution of a decree on the original side of courts established by Royal Charter and decrees of other courts in this country, which were eventually merged in the High Court under the High Courts Act, 1861, sprang out of historical reasons and had nothing to do with the status of the courts as those established by Royal Charter or not. This was pointed out by the Judicial Committee in (1872) 14 Moo Ind App 465. After quoting two extracts therefrom, the learned Judges in *Uthamram Vs. K.M. Abdul Kasim Co.*, went on to say:

"From the observations mentioned above it follows that the mere fact that a court has been established by a Royal Charter does not ipso facto attract the operation of S. 19 of the 1859 Act which corresponds to the present Art. 183. On the other hand, that Article would apply to decrees obtained on the Original Side alone of the High Courts of the three Presidency towns. Act IV of 1859 was superseded by Act IX of 1871, Art. 169 of the latter enactment which corresponded to S. 19 of the old Act accepted the view of the Privy Council and expressly referred to decrees as "those in the exercise of their ordinary original civil jurisdiction. This Article 169 was renumbered as Art. 180 in the Limitation Act of 1877 and the same has been reproduced in the present Limitation Act of 1908 as Art. 183. It will be noticed that the provisions of the Limitation Act are to govern only suits and applications filed in the country. Prior to 1937 there was no provision by which decrees passed outside India could be executed by the Indian courts. Therefore Arts. 182 and 183 can only apply to execution of decrees passed by the courts of this country, and the words "established by Royal Charter" occurring in Art. 183 can refer, therefore, only to such courts established in India and not to any court albeit established by Royal Charter outside its territory."

We are in entire agreement with these observations which represent, in our opinion, a correct statement of the law. We are, however, not able to agree that Art. 182 is applicable. If Art. 183 is applicable only to execution of decrees of a court established by Royal Charter in this country, which, as we think, is correct, on the same logic and reasoning it should, in our view, be held that Art. 182 is not applicable either to execution of foreign judgments because that Article also is confined to execution of a decree or order of any civil court in this country. Mr. V.K. Thiruvengkatachari pressed before us that the language in Art. 183 should be liberally and widely read as so that it comprehends decrees of Superior courts in the reciprocating territory. But the reasoning on this aspect in *Uthamram Vs. K.M. Abdul Kasim Co.*, which commends itself to us, provides an effective answer

against the contention.

(24) We are thus left with Art. 181, which is a residuary article. We are of opinion that this Article is the only one that applies to execution of a foreign judgment under S. 44-A of the Code. The language in column 1 for this Article is not related to any particular court. The Article prescribes a period of three years and the limitation commences when the right to apply accrues. The right to apply under Order 21 Rule 11, CPC for execution of a foreign judgment accrues on and from the date of filing under S. 44-A(1) and for this purpose non-filing of a non-satisfaction certificate is not relevant.

(25) The appeal is dismissed with costs.

(26) Appeal dismissed.