
(2000) 02 AP CK 0035
In the Andhra Pradesh High Court
Case No : CRP No. 2053 of 1996

Potluri Rajeswara Rao

APPELLANT

Vs

Syndicate Bank

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, 13, 39, 44, 44A
Criminal Procedure Code, 1973 (CrPC) — Section 488

Citation : (2000) 3 ALD 508 : (2000) 3 ALT 306

Hon'ble Judges : I. Venkatanarayana, J

Bench : Single Bench

Advocate : Mr. P. Raja Rao, for the Appellant; Mr. K.G. Sastry, for the Respondent

Judgement

1. An interesting question of enforcement of foreign judgment, jurisdiction, involving private international law read with Sections 13, 44 and 44A of the CPC falls for consideration in this revision petition. What is known as "Private International Law" is not a law governing relations between independent States. It is a branch of civil law of (lie State evolved to do justice between litigating parties in respect of transactions involving a fonrign element. Thus private International Law comes into operation whenever the Court is faced with the claim that contains foreign judgment and decree. Instances are not wanting when the Court in one country must take into account the "rule of law" that exists in another country. This is on the basis of the reciprocating agreement entered into between the two countries for the. purpose of enforcing the decree and judgment of another country as if it has been passed and decreed in the country where it is sought lo be enforced. The enforcement of such decree must also be in accordance with the law of the land where it is being made "rule of law".

2. Facts leading to the filing of this revision petition are as set out hereunder :--
The petitioner is the judgment debtor and the respondent is the decree holder. The respondent is a nationalised Bank and it has filed OS No-6907 of 1984 on

the file of the High Court of Justice, Queens Bench Division, London, U.K. for recovery of 4869-60 Pounds. The High Court of Justice, Queens Bench Division, London, issued Writ of Summons on 18-12-1984. The petitioner received the summons at Algeria on 10-6-1985 and expressed his intention to contest the matter by his endorsement "without prejudice". Ultimately the petitioner did not choose to contest and the petitioner was set ex parte and a default judgment was passed on 6-11-1985. The respondent decree holder filed a petition u/s 39 of the CPC for transferring the decree passed by the High Court of Justice, Queens Bench Division, London in OS No.6907 of 1989 against the petitioner-judgment debtor in the Subordinate Judge's Court at Gudivada for execution on the ground that United Kingdom is a reciprocating country to India and according to Section 44(a)(ii) of the CPC the decree may be executed as if it has been passed by the executing Court. The judgment debtor opposed the execution proceedings i.e., EA No.254 of 1992 in OS No.6907 of 1984 on the ground that the decree was passed not on merits but due to default and it is not a decree within the meaning of Section 13(a) and (b) of the Code of Civil Procedure. It was also contended that the judgment debtor was a resident of Algeria and was never resident of London and that he did not submit himself to the jurisdiction of London Court and hence the decree and judgment passed by the Queens Bench, London is a nullity and without jurisdiction. The District Court addressed itself to the issue whether the decree is a default decree or it is on merits and if so whether the judgment debtor submitted himself to the jurisdiction of Courts in London. The District Court allowed the petition holding that the judgment debtor has submitted himself to the jurisdiction of the UK Court and the decree is based on merit and allowed the petition. Aggrieved by the order of the District Judge the present revision has been filed.

3. Sri P. Raja Rao, the learned Counsel for the petitioner has strenuously contended that the impugned order passed by the Court below is illegal and without jurisdiction. It is his contention that the decree passed by the High Court of Justice, Queens Bench, London is a default decree and no evidence was recorded and hence it is not a judgment on merits and is incapable of execution and is hit by Section 13(a) and (b) of the Code of Civil Procedure. It is his contention that an ex parte decree of foreign Court is a nullity if the party against whom the decree is passed does not appear and does not take part in the proceedings of the Court. It is his further contention that the petitioner-judgment debtor never submitted himself to the jurisdiction of the Courts in UK and that he was residing at Algeria at the relevant time of filing the suit and passing of default decree and as such it cannot be enforced in India.

4. Sri K.G. Sastri, the learned Counsel for the respondent-plaintiff supported the judgment of the lower Court and argued that even at the time of issuing summons to the defendant the High Court of Justice, Queens Bench, London was satisfied about the merits of the case. It is his contention that by receiving the summons the defendant has submitted himself to the jurisdiction of the High Court of Justice, London though he has endorsed on the summons "without

prejudice". The District Court found that the writ summons were served on the defendant-judgment debtor at Algeria on 10-6-1985 and at the time of issuing of writ of summons or at the time of passing of the default judgment the petitioner-judgment debtor was neither domicile of United Kingdom nor was he a citizen of United Kingdom. He was a citizen of India and he operated his Bank account at London from Algeria where he was working.

5. Keeping in view the aforementioned facts it has to be examined as to whether the Indian Courts have jurisdiction and if so whether the ex parte decree is hit by Section 13(a) and (b) of the Code of Civil Procedure. Section 13 CPC reads as follows :

13. When Foreign Judgment not conclusive :

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same 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 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 India."

6. Thus, Section 13 lays down that a foreign judgment shall be conclusive as to any matters thereby directly adjudicated between the same parties under whom they or any of them claim litigating under the same title except in cases as mentioned in clauses (a) to (f)- Clauses (a) and (b) are relevant to the instant case. The objection taken on behalf of the petitioner-judgment debtor falls under the exception (a) and (b) and it will be dealt accordingly. The first objection, namely that the High Court of Justice, London was not competent to entertain the action and pass a decree is the most substantial objection. This objection as to jurisdiction is to be looked at not from the point of view of municipal law but private international law. In the present case it is contended that the defendant has neither any property within the jurisdiction of the English Courts nor did he reside there at the time of commencement of the action or at the time of the service of writ summons or at the time of passing the default decree. Whether the defendant submitted to the jurisdiction is the most important issue to be decided. Cheshire (Private International Law, 3rd Edition, Page 139), Cheshire Private International Law, 3rd Edition, Page 139 says as follows :

"As a general rule, an English Court is not prevented from entertaining a suit merely because the parties are foreign by nationality or by domicile or because the incidents that raised the issue have actually occurred in a foreign country. At the same time it is obvious that the power to adjudicate must be subject to some restriction, for otherwise, to mention only one consideration, a judgment would often be nothing but a "brutum fulmen". The general doctrine of English law is that the exercise of civil jurisdiction, in the absence of an Act of Parliament, must in all cases be founded upon one or other of two principles, namely, the principle of effectiveness or the principle of submission."

7. The principle of effectiveness referred to by the author means that a Judge has no right to pronounce a judgment if he cannot enforce it within his own territory. The power of adjudicate means that physical power which becomes exercisable because the property which is the subject matter of the suit is in England or the defendant was present at the time of service of writ summons in England. Speaking about personal action, Cheshire says in the same book "Private International Law" 3rd Edition at Page 139 as follows :

"The principle of effectiveness here is triumphant. Jurisdiction depends upon physical power, what is the same thing in the present connection, the power of issuing process is exercisable only against persons who are within the territory of the sovereign whom the Court represents, the rule at Common Law has always been that jurisdiction is confined to persons who are within the process of the Court at the time of service of the writ. A Court cannot extend its process and so exert sovereign power beyond its territorial limits. Thus jurisdiction depends upon the presence of the defendant in England at the time when the writ is served, since the exercise of judicial power in the shape of service of a writ obviously requires his actual presence The fact that England is the "forum domicilli" or the "foreign registered" or the place where a business has been carried on is insufficient at Common Law to found jurisdiction against an absent defendant. A Legislature may and often does, authorise its Courts to pass judgment upon absentees after substituting some form of notice for personal service of writ, but such a judgment though binding in the country where pronounced has no international validity."

8. Dealing with the concept of effectiveness it will be appropriate to refer to the earliest leading decision in *Gurdayal Singh v. Rajah of Faridkot*, 21 Indian Appeals 171. In the aforementioned case an ex parte decree for money was passed by a Court situated in the territories of the ruling chief of Faridkot, a State in subordinate alliance with the Government of India, against a person who had been employed by that State within its territories but had, before suit brought, relinquished his employment, had left the State, and at the time of suing was residing in another State of which he was domiciled subject. It was held that the decree passed by the Faridkot was a nullity according to private International Law and could not receive the effect in a British Indian Court. Lord Selbourne delivering judgment on behalf of the Judicial Committee said as

follows:

"He (meaning the defendant) was in Jhind when he was served with certain processes of the Faridkote Court, as to which it is necessary for their Lordships to determine what the effect would have been if there had been jurisdiction. He disregarded them and never appeared in either of the suits instituted by the Raja, or otherwise submitted himself to that jurisdiction. He was under no obligation to do so, by reason of the notice of the suits which he thus received or otherwise unless that Court had lawful jurisdiction over him. Under these circumstances there was in Their Lordships' opinion nothing to take this case out of the general rule that the plaintiff must sue in the Court to which the defendant is subject at the time of suit ("Actor Sequitur forum Rei) which is rightly stated by Robert Philimore (International Law, Vol.4 Section 891) to lie at the root of all international and of most domestic jurisprudence on this matter. All jurisdiction is properly territorial.....In a personal action..... a decree pronounced in absentem by a Foreign Court to the jurisdiction of which the defendant has not in any way submitted himself is by international law an absolute nullity. He is under no obligation of any kind to obey it and it must be regarded as a mere nullity by the Courts of every nation except (when authorised by special local Legislation) in the country of the forum by which it was pronounced. These are doctrines laid down by the leading authorities on International Law; among others, by Story (Conflict of Laws, 2nd Edition, Sections 546, 549, 553, 554, 556 and 586) and by Chancellor Kent (Commentaries, Vol.1, page 284, note (c), 10th Edition) and no exception is made to them in favour of the exercise of jurisdiction against a defendant not otherwise subject to it by the Courts of the country in which the cause of action arose, or (in cases of contract) by the Courts of the "locus solutions". In those cases as well as all others, when the action is personal, the Courts of the country in which the defendant resides have power, and they ought to be resorted to, to do justice."

9. Notwithstanding the aforementioned pronouncement strong reliance is placed on the Legislative enactment contained in Order XI of the Supreme Court Rules which confers jurisdiction on English Courts. It is an undisputed fact that the Writ of Summons were served on the defendant-judgment debtor at Algeria on 10-6-1985. It is contended on behalf of the plaintiff that from the point of view of private International Law, an agreement to be governed by the English law would amount to a submission to the jurisdiction of the English Courts. In this particular case such an agreement was sought to be implied from the fact that the defendant operated the account in London from Algeria. A clear distinction, however, must be made between what is valid under a municipal law and what is valid in an International Law. A nation is at liberty to enact whatever law it likes and enforce the same within its own borders, but it does not follow that it will be accepted universally. It is relevant to refer to an earliest judgment which is to the point. In *Buchamm v. Rucker* (1808) 9 East 192 The law of Tobago provided that service of process might be effected upon an absent by mailing a copy of the summons at the entrance of the Court house. After service in this manner

judgment was given against the defendant by a Court of Tobago and later an action on the judgment was brought in England. The defendant proved that he was absent from the island at that time and it was held that the judgment was internationally a nullity. In *Mathappa Chetty v. Chellappa Chetty*, 1 Mad. 106 at 198, the defendant entered into a contract with the plaintiff in Pudukotta State. The law in that State was that a Court of that State would have jurisdiction to entertain a suit if the cause of action arose within that State. The plaintiff sued the defendant in Pudukotta State and obtained a decree which was sought to be enforced in British India Court at Madura. The defendant was not subject of that native State and at the time of institution of the suit in that State the defendant was not resident there. It was held that the decree passed by the Pudukotta State cannot be enforced in British India as that Court was not of competent jurisdiction. The Pudukotta Court was competent to try the suit according to its laws in force in that State, but it had no jurisdiction in an international sense. Mr. Justice Hallway in course of the judgment said:

"If Courts as the French and English arrogate to themselves jurisdiction wherever of false principle of International law they may choose to regard the obligation as subjects to their jurisdiction because the contract was made within their limits, the result will be that other nation will justly treat their decrees as nullities."

Hence the Courts have to address themselves as to whether they have jurisdiction to try a particular dispute before going into merits.

10. The learned Counsel for the petitioner, Sri P. Raja Rao invited my attention to a number of decisions of the High Court and Apex Court on the issues involved in this revision. A strong reliance was placed on the judgment of Calcutta High Court reported in *Indian and General Investment Trust Ltd. Vs. Sri Ramchandra Mardaraja Deo, Raja of Khalikote*, which is identical to the facts of the present case. The learned Judge in his detailed judgment had an occasion to review the entire case law and held that foreign Court must have jurisdiction as per private International law and that mere cause of action does not confer jurisdiction. The Court has held thus:

"After the attainment of a sovereign independent status the Courts in India are not bound to follow any particular principle of Private International Law, as adumbrated by any particular school. India is now free to evolve her own principle, such as are consonant with her own ideas of justice, equity and good conscience.

The principles upon which the English Courts are prepared to entertain actions against non-resident foreigners are not wholly extended by them in foreign Courts and as such foreign Courts cannot always be expected to accept such principles or to recognize the result of proceedings based thereon. In certain circumstances the English Courts have by statutory provision, assumed jurisdiction over non-resident foreigners. Insofar as such "assumed jurisdiction" militates against the principles of Private International Law, acceptable to India,

she cannot be held bound by the same. Such judgments are perfectly valid within the municipal jurisdiction where they are pronounced but have no international validity. The two grounds upon which the validity of a judgment in a personal action are based, from the international point of view, are (i) Effectiveness and (ii) Submission. "Effectiveness" means that a Court should only pronounce judgment in a case where it can execute the decree within its own territory. Such a decree cannot therefore be passed. If at the time of the service of the writ, the defendant does not reside within such jurisdiction and is a foreigner being the subject or citizen of another independent country. But such a decree can still be passed if the defendant has submitted or agreed to submit to the jurisdiction of such a Court. Once he has done so, he cannot afterwards dispute the jurisdiction. According to the English law, even a transient presence of the defendant at the time of service of the writ is enough, and according to some English writers, residence or presence of the defendant at the time of the commencement of the action is sufficient to confer jurisdiction. These principles have, however, not been accepted internationally. "Submission" means a voluntary acceptance of the authority of a Court to pass judgment, which authority such a Court would not otherwise possess. A submission may be express or implied. The mere fact that the parties agree that the law of a particular country would apply may or may not amount to an implied submission to the jurisdiction of the Courts of that country. It will depend on the contract taken as a whole and all the circumstances of a particular case. What must be gathered therefrom is the intention of the parties. But even such an intention cannot be given effect to, if it militates against public policy. The proper law of a contract means that law which a Court is to apply in determining the obligations under the contract. In deciding these matters, there is no rigid or arbitrary criteria such as "lex loci contractus" or "lex loci solutionis". The matter depends on the intention of the parties to be ascertained in each case on a consideration of the terms of a contract the situation of the parties and generally on all the surrounding facts, from which is to be gathered the intention of the parties. In the case of a mortgage (including the case of every secured loan and a debenture loan) the mere fact that moneys are stipulated to be paid in a foreign country, does not amount to an implied submission to the jurisdiction of the Courts of that foreign country, or make the transaction subject to the law of that foreign country except perhaps as to the mode of payment only. The personal covenant, in such case, cannot be severed from the enforcement of the security so as to make possible to institute an action in a foreign country and obtain a judgment thereon according to the law of that country, such as would be valid internationally. The fact that the loan has been raised in a foreign country or that the trustees entrusted with the realisation thereof are foreigners, and do not by themselves amount to submission to the jurisdiction of foreign Court. According to modern ideas, mere allegiance to the crown does not confer jurisdiction upon the Courts in England to pass a judgment which would be binding upon a non-resident foreigner. But even if such a principle ever existed, in the case of British subjects in dependent colonies, it can no longer be applied after India attained

the status of an independent dominion (15th August, 1947) and certainly not after the 26th November, 1949 when she declared herself as independent sovereign democratic Republic.

The mere fact that a cause of action or part thereof arose in a foreign country is not sufficient to confer jurisdiction, from the point of view of Private International Law. The principle of "effectiveness" and "submission" must be applied to find out whether a foreign Court had jurisdiction to pass a decree which would have international validity. There is nothing in the reciprocating agreements between India and -the confer jurisdiction, from the point of view of Private International Law. The principle of "effectiveness" and "submission" must be applied to find out whether a foreign Court had jurisdiction to pass a decree which would have international validity. There is nothing in the reciprocating agreements between India and the United Kingdom which would make any decree passed by the Courts in either country, valid in the other country, where it is not valid from the point of view of Private International Law."

11. It is, therefore, to be remembered that a cause of action may arise in a foreign country but cause of action by itself is not a general ground of jurisdiction in a Private International Law. The well-known Jurist Mr. Albert Venn Dicey in "Conflict of Laws on the question of "jurisdiction in Personam" says:

"The High Court now claims jurisdiction "in personam" over an absent defendant when the action is founded on a contract which is made in England, or which by its terms or by its implication is to be governed by English Law, or on a breach committed in England of a part of a contract wherever made, which ought to have been performed in England. Whether the High Court would concede an analogous jurisdiction to foreign Tribunals is uncertain, for authority can be "Rousillon v. Rousillon" (1880) 14 Ch.D 351 cited for the proposition that the mere circumstance of a contract having been made in a foreign country does not give jurisdiction to the Courts thereof. Even this amount of respect for the "forum obligationis" cannot be explained by the principle of effectiveness....."

12. In the light of the aforementioned discussions, I shall now address myself to the issues whether the High Court of Justice Queens Bench Division, London has got jurisdiction to pass a decree against a person who is non-resident and outside its territorial jurisdiction and whether the default judgment is hit by Section 13(b) of the Code of Civil Procedure. On the facts of the case, the District Court found that the judgment debtor is a citizen of India and he was neither a domicile nor a citizen of either United Kingdom or Algeria though the writ summons were served when he was temporarily residing at Algeria, which is the outside jurisdiction of the London Court. It is obvious from the affidavit filed by one Mr. Allan Richer Tailor in support of application for leave of the Court for service of writ summons outside its jurisdiction that the judgment debtor was not within the jurisdiction of Queens Bench Division, London. The fact that leave was sought to serve the summons outside the Court's jurisdiction establishes that the defendant was outside the jurisdiction of the Court. It is, therefore, clear that

the High Court of Judicature Queens Bench, London cannot validly pass a binding decree against a person residing outside its territorial jurisdiction and who never submitted himself to the jurisdiction of that Court and as such a decree by a superior Court of foreign territory pronounced in absentia and as per International Law is a nullity. The earliest judgment on this aspect is a Bench judgment of Allahabad High Court reported in Sheo Tahal Ram v. Binaek Shukul AIR 1983 All. 689 Speaking for the Division Bench, the Chief Justice Sulaiman has held;

"It is open to a judgment debtor against whom a decree has been passed by a Native State Court to object to its validity on the ground of want of jurisdiction in the Court to which the execution has been transferred. If the decree passed is without jurisdiction and therefore a nullity he can certainly claim that he is not bound by it. It is not incumbent upon him to go to the Court of the Native State and ask that Court to review the order. By doing so he may be said in one sense to subject himself by an adverse order in case it is passed. His remedy obviously is to object to the execution in the Court to which the decree has been transferred and which is now executing it."

13. Hence it cannot be said that service of summons on the judgment debtor by itself amounts to subjecting oneself to the jurisdiction of that Court which issued writ of summons. A constitution Bench of the Supreme Court had an occasion to consider the binding nature of the judgment of a foreign Court. In *R. Viswanathan Vs. Rukn-ul-Mulk Syed Abdul Wajid*, the Apex Court has held that a judgment of the foreign Court to be conclusive between the parties must be a judgment pronounced by a Court of competent jurisdiction as contemplated by Section 13(a) of the Code of Civil Procedure. The Apex Court has held:

"The competence of a foreign Tribunal must satisfy a dual test of competence by the law of the State in which the Court functions and also in all International sense,"

14. The Supreme Court while dealing with Section 13 of the CPC vis-a-vis the rules of Supreme Court of England Order 11 of RSC, held that unless a foreign Court has jurisdiction in the international sense a judgment delivered by that Court will not be recognised or enforceable in India. It cannot be said that an order declaring the domicile of a person under Order 11 of RSC of England is a judgment in rem. In the present case leave was sought by the plaintiff under Order 11 of RSC of England to serve the writ of summons against the defendant out of the jurisdiction of the Court of Queen's Bench Division, London. This clearly establishes that the defendant was outside the jurisdiction of Courts in U.K. A Division Bench of the Madras High Court in *R.M.V. Vellachi Achi Vs. R.M.A. Ramanathan Chettiar*, had an occasion to consider the scope of Section 13(a) and (b) of the Code of Civil Procedure. In this case the plaintiff-appellant filed a suit in Singapore High Court against the defendant-respondent for recovery of a large sum of money on the basis of the alleged advances to the firm to which the respondent was a partner. The said suit was filed in Singapore High Court on the basis of the affidavit filed by the plaintiff attorney for service of summons on the

respondent-defendant in India where he was living,

15. The High Court of Singapore ordered notices on 2-6-1966 to the respondent-defendant to be served in India in lieu of service in Singapore. Notice was served in India on 4-7-1966. The respondent-defendant did not appear in the Court on 29-7-1966. The Deputy Registrar of High Court of Singapore issued a certificate of non-appearance of respondent-defendant in the suit and on the same day on hearing the Solicitor for the plaintiff it was ordered that the plaintiff was at liberty to sign the final judgment against the defendant. The Bench has said :

"In this case we have already observed that the respondent never lived in Singapore and any time nor did he appear as plaintiff or defendant in any action, that at the time of the above said suit No.598 of 1966 he was living in India and that he never submitted to the jurisdiction of Singapore Court. We are, therefore, of the view in the circumstances of the cases, that the respondent never submitted to the jurisdiction of the foreign Court and, therefore, the decree passed by the foreign Court against the respondent must be deemed to have been passed by the Court having no jurisdiction."

16. In another judgment of Delhi High Court reported in *Bharat Nidhi Ltd. Vs. Megh Raj Mahajan*, , a suit was filed against the defendant in Sialkot in Pakistan in 1949 resulting in an ex parte decree. Decree contain observations that summons were served on the defendant. Defendant was residing in Sialkot till 1947. Afterwards the defendant became a permanent domicile of India and has never gone to Pakistan. Evidence let in clearly shows that the defendant was not served summons while he was in Pakistan. Since both on the date of the institution of the suit in Sialkot and on the date of judgment defendant was domiciled resident in India and did not submit to the jurisdiction of Sialkot Court in Pakistan decree pronounced in absentia is a nullity and unenforceable in India. The Court held :

"From the evidence it must be held that the defendant was neither a national nor domicile, nor a citizen, nor a resident of Pakistan either on the date of the commencement of the suit or the date of the decree. He did not submit to the jurisdiction of the Pakistan Courts and he was not served while present in Pakistan. In those circumstances the decree must be held to be a nullity not enforceable in India u/s 13 of the Civil Procedure Code."

17. From the aforementioned discussions and the judicial pronouncements, I hold to the petitioner-defendant never submitted to the jurisdiction of High Court of Justice, Queen's Bench, London and, therefore, the decree passed by the foreign Court is a nullity having no jurisdiction and is hit by Section 13(a) of the Code of Civil Procedure.

18. Now I will address myself to the second "objection u/s 13(b) i.e., "where it has not been given on merits of the case". It is the contention of the petitioner-judgment debtor that the decree, said to have been passed, is solely due to the default of appearance and without taking any evidence in proof of claim and as

such the decree has not been rendered on merits. It is the finding of the District Court that though the decree is an ex parte decree still it is deemed to have been given on merits. But there is nothing on record to show that evidence has been recorded after the service of summons on the defendant at Algeria on 10-6-1985. The record does not indicate that any evidence was led and documents were tendered and proved. A Full Bench of the Madras High Court had an occasion to consider this aspect in a case reported in *Md. Kassim and Co. v. Seenipakir* AIR 1927 Mad. 265. Facts, as unfolded from the record, are that a suit OS No.21 of 1923 was filed by the plaintiff on the basis of a judgment of the Supreme Court of Penang obtained by the plaintiff against defendants 1 and 2 and others. Though they were British Indian subjects they were at the time of the suit in Penang residing within the jurisdiction of Penang Court. At the hearing of the suit they did not appear and a default judgment was given and based on that judgment a suit was brought at Ramanad, Madras Presidency in India. The Full Bench, following the Privy Council judgment reported in *Keymer v. Viswanadhan Reddi* 40 Mad. 112 held that the relevant provision applicable is sub-section (b) of Section 13 of the Code of Civil Procedure. In that case the Privy Council, in agreement with the Madras High Court, held that a judgment in England after the defence was struck off for default in not answering the interrogatories and the suit has thus become an undefended one, was not a judgment on merits and a suit founded on it in India must fail and accordingly it was dismissed.

19. The Apex Court in a judgment reported in *Smt. Satya Vs. Shri Teja Singh*, , dealing with the issue whether Indian Courts are bound to give recognition to foreign judgment with reference to Section 13 of the Code of Civil Procedure, has held as follows :

"The validity of a foreign judgment rendered in a civil proceeding must be determined in India on the terms of Section 13, Civil Procedure Code. If the judgment falls under any of the clauses of Section 13 it will cease to be conclusive as to any matter thereby adjudicated upon and will be open to collateral attack on the grounds mentioned in Section 13. It is beside the point that the validity of the judgment is questioned in a criminal Court and not in a civil Court. Thus, a foreign decree of divorce obtained by the husband from the Nevada State Court in USA in absentia of the wife without her submitting to its jurisdiction will not be valid and binding on a criminal Court in proceedings for maintenance u/s 488 Criminal PC when it is found from the facts on record that the decree of divorce was obtained by fraud or by making a false representation as to a jurisdictional fact viz., that the husband was a bona fide resident and was domiciled in Nevada. The decree being open to collateral attack on the jurisdictional fact the recital in the judgment of the Nevada Court that the respondent was a bona fide resident of and was domiciled in Nevada is not conclusive and can be contradicted by satisfactory proof."

On the question whether default judgment of a foreign Court is enforceable, High

Court of Bombay in *Algemene Bank Nederland NV Vs. Satish Dayalal Choksi*, , after reviewing the entire case law the High Court has held as follows :

"In my view, in these circumstances the case before me falls under the ratio laid down by the Privy Council in *Keymer's* case (1916 P.C. 121). The decision of the Hong Kong Court is not given on examination of the points at controversy between the parties. It seems to have been given ex parte on the basis of the plaintiffs pleadings and documents tendered by the plaintiff without going into the controversy between the parties since the defendant did not appear at the time of the hearing of the suit to defend the claim. The present judgment, therefore, is not a judgment on the merits of the case. Hence this is not a fit case where leave can be granted under Order 21, Rule 22 of the CPC for the purpose of executing the decree here."

The Apex Court in *Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi and Another*, , had an occasion to consider Section 13(b) of the CPC and held that the foreign judgment, not given on merits, will not be recognized in India. It was held as follows :-

"Clause (a) of Section 13 states that if a foreign judgment has not been given on the merits of the case, the Courts in this Court will not recognise such judgment. The clause should be interpreted to mean (a) that the decision of the foreign court should be on a ground available under the law under which the parties are married and (b) that the decision should be a result of the contest between the parties. The latter requirement is fulfilled only when the respondent is duly served and voluntarily and unconditionally submits himself/herself to the jurisdiction of the Court and contests the claim or agrees to the passing of the decree with or without appearance. A mere filing of the reply to the claim under protest and submitting to the jurisdiction of the Court, or an appearance in the Court either in person or through a representative for objecting to the jurisdiction of the Court, should not be considered as a decision on the merits of the case. In this respect the general rules of acquiescence to the jurisdiction of the Court which may be valid in other matters and areas should be ignored and deemed inappropriate.

The second part of clause (c) of Section 13 states that where the judgment is founded on a refusal to recognise the law of this country in cases in which such law is applicable, the judgment will not be recognised by the Courts in this country. The marriages which take place in the country can only be under either the customary or the statutory law in force in this country. Hence, the only law that can be applicable to the matrimonial disputes is the one under which the parties are married, and no other law. When, therefore, a foreign judgment is founded on a jurisdiction or on a ground not recognised by such law, it is a judgment which is in defiance of the law. Hence, it is not conclusive of the matters adjudicated therein and, therefore, unenforceable in this country. For the same reason, such a judgment will also be unenforceable under clause (f) of Section 13, since such a judgment would obviously be in breach of the

matrimonial law in force in this country."

20. On the aforementioned conspectus of statutory provision and the judicial pronouncements of Apex Court and various High Courts the following principles emerge:

(a) A judgment of foreign Court is conclusive between the parties and is a judgment pronounced by a Court of competent jurisdiction as contemplated in Private International Law vis-a-vis Section 13(a) of the Code of Civil Procedure. The Court will be a Court of competent jurisdiction where both the parties voluntarily and unconditionally subject themselves to the jurisdiction of that Court.

(b) A foreign judgment will be conclusive only, if they contested and it was adjudicated on merits. If the judgment is not based on merits that judgment will not be conclusive and is hit by Section 13(b) of the Code of Civil Procedure.

21. The District Court held that the defendant-judgments debtor is a citizen of India and that he was never a citizen or domicile of United Kingdom and that the writ summons were served at Algeria and that the summons were received without prejudice to the rights of the defendant. Having given clear findings on those issues, the District Court was not justified in ordering the petition filed u/s 39 of the Code of Civil Procedure. On the face of such findings, the judgment and decree of the High Court of Justice, Queen's Bench Division passed in OS No.902 of 1984 dated 6-11-1985 is a nullity. The finding of the District Court that mere receipt of writ of summons by the defendant at Algeria amounts to submission of jurisdiction is erroneous. Similarly the finding of the District Court that the affidavit of the attorney of the plaintiff itself is evidence is unsustainable.

22. For all the aforementioned discussions and the various judicial pronouncements of Supreme Court and various High Courts, I hold that the decree and judgment of the High Court of Justice, Queen's Bench, London in OS No.6907 of 1984 dated 6-11-1985 is a nullity and is hit by Section 13(a) and (b) of the CPC and is incapable of enforcement and is without jurisdiction. The order of the District Court in EA No.254 of 1992 dated 7-3-1996 is set aside and the petition filed by the judgment debtor u/s 39 of the CPC is dismissed and the revision petition is allowed with costs throughout.