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# **RECOGNITION & ENFORCEMENT OF A FOREIGN JUDGEMENT IN PAKISTAN: A LEGAL OVERVIEW**

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# Abstract

The enforcement of foreign decrees/judgements in a territorial jurisdiction are a crucial aspect of private and international law. Over the years cross-border transactions are on an exponential rise, the recognition and execution of judgments rendered by foreign courts have become increasingly significant. This article examines and discusses the legal principles and procedural requirements for enforcing foreign judgements/decrees in Pakistan.

## Law Governing the Enforcement of Foreign Decrees/Judgements in Pakistan

In Pakistan, upon obtaining a foreign decree/judgement three courses are available to a decree holder to have the foreign decree/judgement enforced/executed in Pakistan<sup>[1]</sup>:

### **(1) *Direct Enforcement of a Foreign Decree under Section 44-A of the Code of Civil Procedure, 1908***

The Decree Holder can seek direct enforcement of the foreign decree by filing execution proceedings under Section 44-A of the Code of Civil Procedure, 1908 ("CPC, 1908"), so long as the decree was rendered by the Superior Courts of either the United Kingdom or a Reciprocating Territory. A reciprocating territory is any foreign jurisdiction that has been declared by the Federal Government to be a reciprocating territory by publishing the name of the relevant jurisdiction in the official

gazette of Pakistan. It is pertinent to mention that a decree executable under section 44-A of the CPC, 1908 means any decree under which a sum of money is payable provided the money under the decree is not payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

Where the foreign decree has been rendered by a Superior Court of either the United Kingdom or a Reciprocating Territory, the law in Pakistan deems such a foreign decree as a decree passed by the District Court in Pakistan. However, there are additional prerequisites that must be fulfilled before such a method for direct enforcement can be adopted. In order for it to be directly enforced in Pakistan by virtue of Section 44-A of the CPC, 1908, it must be a "conclusive judgement" in terms of Section 13 of the CPC, 1908. Therefore, if the foreign judgement falls within any of the exceptions mentioned in clauses (a) to (f) of Section 13 of the CPC, 1908 then the foreign judgement/decreed cannot be enforced in Pakistan by virtue of Section 44-A of the CPC, 1908.

One of the main issues which arises when assessing whether a foreign decree is conclusive or not is with regards to clause (b) of Section 13 of the CPC, 1908, which mandates the foreign judgement/decreed to be given on "merits". Since, the decree holder is seeking the enforcement of a foreign judgement/decreed in Pakistan, therefore what amounts to a decision given on merits is also to be assessed and determined in accordance with the law applicable in Pakistan.

The jurisprudence in Pakistan has fairly developed over the years to establish the contours of a "decision given on merits"<sup>[2]</sup>.

<sup>[1]</sup> 1990 MLD 1779

<sup>[2]</sup> PLD 1960 (W.P.) Karachi 594

Thus, the true test for determining whether a decision has been given on merits or not, is first that there should be direct adjudication between the parties and second the decision must be given by a Competent Court on the basis of truth, which means that the decision must be rendered on the basis of evidence present before the Court and even an ex parte decree, which is given as a matter of course simply because the defendant has failed to appear in Court to defend the suit would not be regarded as a judgement given on merits[3].

## **(2) *Filing a Fresh Suit on the basis of a Foreign Judgement in terms of Section 13 of the CPC, 1908***

Where the foreign judgement or decree has not been passed by the United Kingdom or a Reciprocating Territory, then Section 13 of the CPC, 1908 may be used as a fallback provision to file a fresh suit treating the foreign decree as a fresh cause of action on the basis of which a suit is filed before the Courts in Pakistan. As explained above, it is paramount for the foreign judgement or decree to satisfy the pre-requisite of being conclusive in terms of Section 13 of the CPC, 1908.

## **(3) *Filing a Fresh Suit on the Original Cause of Action***

If the foreign Judgement or decree is not conclusive in terms of Section 13 of the CPC, 1908 then a fresh suit can be filed under the laws applicable in Pakistan on the original cause of action.



[3] 2009 CLD 354, PLD 2023 ISL 220 & PLD 1960 (W.P.) Karachi 594