

## Limitation to enforce a foreign award is twelve years (Bombay High Court)

*Update by Editor*

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**Imax Corporation v. E-City Entertainment (I) Pvt. Ltd. [OVERRULED IN *Union of India v. Vedanta Ltd.*, (2020) 10 SCC 1]**

**Court:** Bombay High Court | **Case Number:** Commercial Arbitration Petition No. 414 of 2018 |  
**Citation:** (2020) 1 AIR Bom 82 | **Bench:** G S Kulkarni J | **Date:** 13 November 2019

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When the court is satisfied that a foreign award is enforceable<sup>1</sup>, it becomes a decree of the court and can be executed. Per *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2001) 6 SCC 356, the Arbitration and Conciliation Act, 1996 (“ACA”) contemplates a single proceeding for deciding enforceability, and then its execution in that proceeding.

What is the limitation to file such a single proceeding was the main question in this case—three years under Article 137 of the Limitation Act, 1963, or twelve years, under Article 136?

This question arose mainly because of these facts: –

- (a) The awards were of year 2006, 2007 and 2008, in favour of Imax.
- (b) On 27 July 2008, with some delay, E-City filed application in the High Court of Bombay to set these foreign awards aside.
- (c) The court condoned delay on 10 June 2013 and also ruled that the set-aside applications were maintainable.
- (d) Imax went to the Supreme Court, which first stayed the set-aside proceedings, but later on 10 March 2017 dismissed the set-aside applications ruling that the High Court of Bombay had no jurisdiction.
- (e) Imax then filed the petition to enforce and execute the awards on 02 April 2018. No application to condone delay was filed.

Also, a single judge of the High Court of Bombay in *Noy Vallesina Engineering Spa v. Jindal Drugs Limited*, 2006 SCC OnLine Bom 545 (D R Deshmukh J), after reconsidering the issue of limitation in detail had already ruled that if the court is yet to record its satisfaction that the award is enforceable, limitation for enforcement would be governed by Article 137 (that is, three years from the date when the right to apply accrues).

In these facts, and based on law set out in *Noy Vallesina*, E-City argued that: –

- (a) Article 137 applied.
- (b) The right to apply accrued, and the limitation started to run, as soon as the awards were published (for even after proceedings are filed to challenge the foreign awards, the decree-holder can file proceedings for enforcement).
- (c) Imax ought to have filed an application seeking condonation of delay, which it did not.

This is how the court dealt with the arguments.

It first set out an underlying tone observing that the ACA requires broader interpretation particularly in cases of enforcement of foreign award.

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<sup>1</sup> That is, when the court is of the view that none of the grounds set out in section 48 of the Arbitration and Conciliation Act, 1996 are attracted.

It then took up in the judgement the alternative argument, that is, was the petition within limitation even assuming that Article 137 applied? It answered yes and reasoned that:

- (a) Even if the delay in filing the Section 34-application had not been condoned from 27 June 2008 until 10 June 2013, it cannot be said that this application was not pending. This is so because once the delay was condoned, it would relate back to the day the petition was filed, that is, 27 June 2008 [citing to *Delhi Development Authority Amita Nand Aggarwal*, 2008 (1) Arb. LR 588 (Delhi) where the Delhi High Court ruled that the date of filing was the original date, and not the date when it was re-filed after removing the objections].
- (b) Considering the provisions of the ACA prior to the 2015 amendment (with effect from 23 October 2015), filing a set-aside application under Section 34 of the ACA amounted to stay of the award.
- (c) The substantive cause of action, therefore, arose only on 10 March 2017 when the Supreme Court held the set-aside application not maintainable.

After dealing with the alternative argument, the court then considered as to which provision of the Limitation Act, 1963 applied for enforcing a foreign award? Article 136 or Article 137?

It ruled that Article 136<sup>2</sup> applies. It said that a foreign award is stamped as a decree<sup>3</sup> and is enforced and executed in the same proceeding in two stages— first enforcement and then execution<sup>4</sup>. Therefore, “Article 136 ... would surely become applicable”.

The court also cited two decisions of a single-judge bench of the Madras High Court which had ruled that Article 136 would apply [*Compania Naviera v. Bharat Refineries Ltd.*, O.S.A. No. 52 of 2008 dated 01/08/2008; *Compania Naviera ‘SODNOC’ v. Bharat Salt Refineries Ltd.*, AIR 2007 Mad. 251]

The court distinguished *Noy Vallesina* by reasoning that: –

- (a) Even by applying Article 137, the petition is not barred by limitation.
- (b) Applying the law laid down in *Fuerst*, and *Shriram EPC*, the court cannot overlook the prayers which are combined for enforcement and execution.
- (c) A broader view is required to be taken to advance the object and intention of the ACA and not a technical approach that the petition is time barred because application for condonation of delay was not filed and the delay was not condoned.
- (d) The Supreme Court has further clarified in *Shriram EPC* that the expression foreign award is “stamped as a decree” used in *Fuerst*, means “regarded as a decree”.

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<sup>2</sup> (Excerpted) The limitation is twelve years for the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court. Limitation starts to run when the decree or order becomes enforceable.

<sup>3</sup> Citing to *Shriram EPC Ltd. v. Rioglass Solar SA*, (2018) 18 SCC 313

<sup>4</sup> Citing to *Thyssen Stahlunion v. Steel Authority of India*, (1999) 9 SCC 334 and *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2001) 6 SCC 356