

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

FAO (MAT) No.01/2025

Pronounced on : 08.07.2026

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Rahul Raina, Aged 48 years,
S/o Sh. Surinder Kumar Raina,
R/o H. No. 668, Sector-E,
Sainik Colony, Jammu.

.....Petitioner(s)

Through :- Mr. Vikram Sharma, Sr. Advocate with
Mr. M Nadeem Bhat, Advocate &
Mr. S Sanpreet Singh, Advocate.

v/s

Nadejda Raina,
W/o Sh. Rahul Raina,
R/o H. No. 486/1, Sector-C,
Sainik Colony, Jammu.

.....Respondent(s)

Through :- Mr. Ravinder Sharma, Sr. Advocate with
Mr. Aditya Vikram Sharma, Advocate &
Mr. Rahul Sharma, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
08.07.2026

1. The parties are embroiled in a matrimonial dispute. Although their marriage was solemnized at Sainik Colony, Jammu, they shifted to England after the marriage, where both of them were employed. Two minor children were born out of the wedlock. Subsequently, the parties separated pursuant to a consent decree dated 17.01.2022 passed by the High Court of Justice, Family Division, Strand, London“hereafter the foreign court”. In terms of the said decree, both parties were required to discharge certain obligations concerning maintenance, custody, and the welfare of the minor children.

2. It is stated that after the passing of the aforesaid decree, the respondent-wife returned to India. She thereafter approached the foreign court, seeking enforcement of the undertakings and directions contained in the consent decree. However, the said Court, while rejecting her application, observed that she had neither registered the decree in India nor initiated any independent proceedings before the competent courts in India. It also held that since the minor children were residing in India, it would not be appropriate for the Courts of England and Wales to pass any further orders concerning their custody or welfare. The parties were accordingly left at liberty to pursue their remedies before the competent courts in India.
3. The case of the petitioner is that, as the respondent failed to abide by the terms and conditions of the aforesaid consent decree, he instituted an execution petition under Section 44-A of the Code of Civil Procedure before the District Family Court, Jammu. The said execution petition was subsequently transferred to the Court of the learned Additional Principal Judge, Family Court, Jammu.
4. Prior to the institution of the execution proceedings, the respondent-wife had already initiated proceedings under Section 125 of the Code of Criminal Procedure seeking maintenance. In those proceedings, the petitioner had filed an application seeking custody of the minor children along with visitation rights. However, the petitioner subsequently withdrew the said application on the premise that the decree passed by foreign court of London was capable of execution in India. The learned Trial Court, however, dismissed the execution petition on the grounds that the requirements of Section 44-A of the

Code of Civil Procedure had not been complied with and that the execution petition was barred by limitation, having not been filed within a period of three years. Aggrieved thereby, the petitioner has challenged the said order, contending that no opportunity was afforded to him to rectify the defects in the execution petition, thereby violating the principles of natural justice.

5. It is further contended by the petitioner that immediately upon returning to India, the respondent deliberately failed to comply with the judgment and decree passed by the foreign Court. According to the petitioner, the learned Trial Court failed to appreciate that a foreign decree, if otherwise executable in India, is enforceable within the same period of limitation as would have been available had its execution been sought before the Court which passed the decree.
6. Learned Senior Counsel for the petitioner vehemently contended that, although the learned Trial Court placed reliance upon the judgment of the Hon'ble Supreme Court in ***Bank of Baroda v. Kotak Mahindra Bank Ltd.***, reported in 2020 AIR (SC) 1474, while holding that the foreign decree could be enforced only within a period of three years, it failed to appreciate the ratio of the said judgment in its correct perspective and consequently fell into error. It was submitted that the judgment itself clarifies that Section 44-A of the Code of Civil Procedure does not prescribe any period of limitation for the execution of a foreign decree. According to the Id.Counsel, Article 136 of the Limitation Act applies only to decrees passed by courts in India, whereas the execution of a foreign decree falls within the ambit of Article 137. It was further argued that, in the present case, the decree

was passed by a competent court in London, where the prescribed period of limitation for its enforcement is six years. Therefore, the execution petition filed before the Family Court at Jammu was well within the period of limitation, reckoned from the date of the decree passed by the London Court. It was contended that had the petitioner failed to seek execution of the decree within the prescribed period of six years in the country where it was passed, he would have been precluded from seeking its enforcement in India. However, since the decree was passed in the year 2022 and the execution proceedings were initiated well within the said period, the petition could not have been held to be barred by limitation.

7. Per contra, ld. Sr.Counsel for the respondent vehemently contended that the Trial Court had rightly appreciated the controversy involved and committed no error in dismissing the execution petition. It was submitted that the petitioner had failed to comply with the mandatory requirements of Section 44-A of the Code of Civil Procedure. In particular, the petitioner did not produce the certificate contemplated under sub-section (2) of Section 44-A certifying the extent to which the decree had been satisfied or adjusted. It was further contended that the execution petition also did not conform to the requirements of Order XXI Rule 11(2) of the Code of Civil Procedure, as it lacked the necessary particulars mandated thereunder. In view of these procedural deficiencies, it was argued that the learned Trial Court was fully justified in dismissing the execution petition.
8. Have heard ld. counsel for the parties and perused the material available on record.

9. In the aforesaid (supra), a decree was passed by a London Court which was sought to be executed in India after fourteen years after the decree was passed by said court by taking recourse of 44-A read with Order XXI Rule 3 of the CPC. The Trial Court having found that the decree is time barred held that in terms of Article 136 of the Limitation Act, which will apply to the execution petition, such should have been filed within 12 years after the decree had been passed by the London Court, which view was upheld by the High Court. The matter was before the Apex Court, there it raised the following questions,

- (i) Does Section 44A merely provide for manner of execution of foreign decrees or does it also indicate the period of limitation for filing execution proceedings for the same?
- (ii) What is the period of limitation for executing a decree passed by a foreign court (from a reciprocating country) in India?
- (iii) From which date the period of limitation will run in relation to a foreign decree (passed in a reciprocating country) sought to be executed in India?

10. While dealing with **Question No.1**, the Hon'ble Supreme Court observed that the expression "**cause country**" refers to the country in which the decree was passed, whereas the expression "**forum country**" denotes the country in which such decree is sought to be executed. In the present case, England is the *cause country* and India is the *forum country*. Upon an elaborate consideration of the issue, the Hon'ble Supreme Court held that Section 44-A of the Code of Civil Procedure merely enables a District Court in India to execute a decree passed by a superior court of a reciprocating territory and mandates that such decree shall be executed in the same manner as a decree passed by an Indian court. However, the provision neither prescribes nor indicates

the period of limitation within which an execution petition for enforcement of a foreign decree is required to be filed.

11. While answering **Question No.2**, the Hon'ble Supreme Court observed in paragraphs 33, 34 and 35 as under:-

"33. The view worldwide appears to be that the limitation law of the cause country should be applied even in the forum country. Furthermore, we are of the view that in those cases where the remedy stands extinguished in the cause country it virtually extinguishes the right of the decree-holder to execute the decree and creates a corresponding right in the judgment debtor to challenge the execution of the decree. These are substantive rights and cannot be termed to be procedural. As India becomes a global player in the international business arena, it cannot be one of the few countries where the law of limitation is considered entirely procedural.

34. We have already clearly indicated that if the law of a forum country is silent with regard to the limitation prescribed for execution of a foreign decree, then the limitation of the cause country would apply.

35. We answer Question No. 2 by holding that the limitation period for executing a decree passed by a foreign court (from a reciprocating country) in India will be the limitation prescribed in the reciprocating foreign country. Obviously, this will be subject to the decree being executable in terms of Section 13 of the CPC."

12. In answering **Question No.3**, the Hon'ble Supreme Court held that, ordinarily, the period of limitation commences from the date on which the decree is passed in the *cause country*, and not from the date on which its execution is sought in the *forum country*. It was further held that if the decree-holder does not initiate execution proceedings in the cause country within the period of limitation prescribed therein, he cannot subsequently approach the forum country and contend that a fresh cause of action has arisen or that the limitation applicable in the forum country should govern the execution proceedings.

13. There is no dispute that the decree sought to be executed is a consent decree dated 17.01.2022 passed by the High Court of Justice, Family Division, Strand, London. It is equally undisputed that under the law applicable in England, such decree remains executable for a period of six years. The law declared by the Hon'ble Supreme Court in *Bank of Baroda v. Kotak Mahindra Bank Ltd.* leaves no manner of doubt that Section 44-A CPC merely prescribes the mode of execution of a foreign decree and does not itself prescribe any period of limitation. Ordinarily, where no execution proceedings have been initiated in the cause country, the limitation governing execution in the cause country applies and begins to run from the date of the decree. Only where execution proceedings have first been pursued in the cause country would Article 137 become relevant, requiring the decree-holder to approach the Indian court within three years of the conclusion of such proceedings. Admittedly, no execution proceedings were instituted in England. Consequently, the petitioner was entitled to invoke Section 44-A CPC at any time within the six-year limitation prescribed under English law. Since the execution petition was filed on 22.04.2025, well within six years of the decree dated 17.01.2022, the finding of the Trial Court that the petition was barred by limitation is clearly contrary to the law laid down by the Hon'ble Supreme Court.
14. Therein however the apex court carved out an exception by holding that where the decree-holder has initiated execution proceedings in the cause country and such proceedings remain pending for some time or result only in partial satisfaction of the decree, the right to invoke

Section 44-A of the Code of Civil Procedure in India would accrue only upon the conclusion of the execution proceedings in the cause country. In such circumstances, an application under Section 44-A is required to be filed before the competent court in India within three years from the date of finalization of the execution proceedings in the cause country, as contemplated under Article 137 of the Limitation Act. The Court further clarified that merely applying in the cause country for a certified copy of the decree or for the certificate contemplated under Section 44-A would not amount to taking steps in aid of execution. Accordingly, the Hon'ble Supreme Court concluded that, save in the aforesaid exceptional situation, the period of limitation begins to run from the date on which the decree is passed by the foreign court of the reciprocating territory.

15. The Trial Court further dismissed the execution petition on the ground that it was not accompanied by the certified copy of the decree, the certificate contemplated under Section 44-A (2) CPC, and the particulars required under Order XXI Rule 11 CPC. These requirements are procedural in nature and facilitate the execution of a foreign decree. They neither determine the substantive right of execution nor affect limitation. Once the Trial Court noticed such curable defects, the proper course was to grant the petitioner a reasonable opportunity to remove them instead of dismissing the petition outright. Denial of such opportunity has resulted in manifest prejudice and is contrary to the settled principle that procedural law is intended to advance, and not defeat, the cause of justice.

16. It is also significant that the respondent herself invoked the jurisdiction of the said foreign court in London for enforcement of the petitioner's undertakings under the consent decree. The said Court, however, declined to entertain the application and expressly observed that, since both parties and the minor children had shifted to India, any further proceedings should be pursued before the competent courts in India. The respondent has thereafter instituted proceedings under Section 125 CrPC before the Indian courts and has obtained maintenance. These circumstances reinforce the binding character of the consent decree and negate any suggestion that the petitioner could not seek its enforcement before the Indian courts. Withdrawal of proceedings under the Guardians and Wards Act or any other collateral proceedings does not affect the maintainability of the execution petition.
17. The respondent also contended that the decree may not satisfy the requirements of Section 13 CPC. At this stage, the contention is premature. Whether the foreign decree falls within any of the exceptions enumerated under Section 13 is a matter to be considered by the Executing Court after a duly constituted execution petition is before it. All objections available under Section 13 or otherwise shall remain open for consideration in accordance with law.
18. Accordingly, the petition is allowed. The impugned order is set aside and the execution petition is restored to its original number. The Executing Court shall grant the petitioner reasonable time to cure the procedural defects by filing the certified copy of the decree, the certificate contemplated under Section 44-A (2) CPC, and by ensuring compliance with Order XXI Rule 11 CPC, if necessary. Upon such

compliance, the Executing Court shall proceed to consider the execution petition on its own merits in accordance with law. All objections available to the respondent, including those under Section 13 CPC, are left open. The parties shall appear before the Executing Court on 30.07.2026.

(Sanjay Parihar)
Judge

JAMMU
08.07.2026
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Whether the order is speaking : Yes
Whether the order is reportable : Yes

