A foreign judgment sought to be enforced under Section 44A read with Section 13 CPC is not conclusive or enforceable in India, if it is rendered by summary judgment without prior permission of the Central Government or RBI required as per Section 47(3) FERA

The **Supreme Court** in the case of **MESSER GRIESHEIM GMBH vs GOYAL MG GASES PVT LTD [2026 INSC 401] dated April 21, 2026**, has held that a foreign judgment sought to be enforced under Section 44A read with Section 13 CPC is not conclusive or enforceable in India where it is rendered by summary judgment despite the existence of bona fide triable issues supported by contemporaneous material, because such adjudication is not a judgment on merits within Section 13(b) and is opposed to natural justice within Section 13(d).

The Court clarified that Section 47(3) of FERA draws a distinction between institution of legal proceedings and enforcement of a judgment. While proceedings to determine liability are not barred, no steps can be taken to enforce the judgment or decree without prior permission of the Central Government or RBI, and such regulatory approval remains a condition precedent to enforcement.

The Court observed that the core question under Section 13 CPC was whether the English Court's summary judgment was a judgment on merits and whether the procedure adopted was consistent with natural justice. The Bench found that the respondent had raised triable issues based on three alleged oral agreements and had relied upon contemporaneous documents such as balance sheets and board minutes carrying statutory significance under the Companies Act, 1956. In such circumstances, the respondent ought not to have been foreclosed from a full opportunity to defend.

On the FERA issue, although the Court held that the finding on Section 13 CPC was sufficient to dismiss the appeal, it still clarified the legal position under Section 47 FERA. The Court distinguished between bringing legal proceedings in India and taking steps for enforcement of a judgment. It held that there is no prohibition on institution of proceedings or adjudication of liability, but no steps for enforcement can be taken without prior permission of the Central Government or RBI. The Court rejected the submission that the RBI condition created an absolute and perpetual bar to enforcement, but held that RBI approval is sine qua non before taking enforcement steps.

The Court further clarified that the English Court was a court of competent jurisdiction under the contractual clauses conferring English law and jurisdiction, and no case of fraud under Section 13(e) CPC was made out. However, the foreign judgment failed the tests under Section 13(b), (c), (d) and (f) CPC because it was rendered by summary judgment despite bona fide triable issues, failed to give due effect to statutory permissions and conditions under Indian foreign exchange law, denied leave to defend, and sustained a liability contrary to law in force in India.

The Court noted that the balance sheet for FY 2001-02 specifically recorded that the appellant had paid the ECB liability pursuant to an understanding with the respondent to partially compensate it for losses suffered, and further stated that the respondent considered the appellant's demand to have no merit. The minutes of meetings dated May 27, 2002 and January 31, 2003 showed adoption and approval of those accounts with participation and signatures of the appellant's nominee director. These contemporaneous records, in the Court's view, disclosed real and not fanciful defences.

The Court observed that even under the principles governing summary judgment, both in Indian law and under the UK CPR, summary disposal is inappropriate where triable issues exist and fuller investigation may affect the outcome. Since the respondent had produced contemporaneous documentary material and sought leave to defend, the English Court ought to have refrained from disposing of the matter summarily. The grant of summary judgment therefore resulted in premature adjudication of disputed questions of fact and denied a meaningful opportunity to establish the defence through oral evidence and cross-examination.

Accordingly, the Supreme Court upheld the dismissal of the execution of the English judgment, holding that the foreign judgment was unenforceable in India as it fell within the exceptions under Section 13 CPC, though the High Court's broader view that the RBI condition created an absolute bar to enforcement was reversed as a matter of legal principle.