

PETITIONER:
NARHARI SHIVRAM SHET NARVEKAR

Vs.

RESPONDENT:
PANNALAL UMEDIRAM

DATE OF JUDGMENT 16/01/1976

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
SARKARIA, RANJIT SINGH

CITATION:
1977 AIR 164 1976 SCR (3) 149
1976 SCC (3) 203

ACT:

Code of Civil Procedures 38 and 39 Transfer of a decree dated 29-6-1960 passed by the Bombay High Court to the Goa Court for execution- Whether it is a "foreign decree" within the meaning of sec. 2(6), C.P.C. and whether the High Court a "foreign court" within the meaning of s. 2(5) especially when the parties subjected themselves to the jurisdiction of that Court by prosecuting their case upto a certain stage.

Constitution of India-Art. 261(3)-Meaning of the word "according to law"- Whether they refer to the "law in force" during the pendency of the appeal or the "law in force" on the date of transfer of the decree for execution Scope of Art. 261(3).

Decree-Executability of a decree is not a vested right-Extension of the provisions of Civil Procedure Code to a State later on does not affect the decree.

HEADNOTE:

In the Civil Suit No. 203 of 1955, on the original side of the Bombay High Court, filed by the decree-holder/respondent against the appellant/judgment debtor for recovery of certain amount of money, summons were served on the judgment-debtor who after filing his written statement absented himself, and did not take any further part in the proceedings of the Court resulting in a decree dated 29-6-1960 for Rs. 65,953.79. On 20-12-1961, Goa became a part of India and was made a Union Territory of India by the Constitution (Twelfth Amendment) Act, 1962 passed on 27-3-1962. The decree-holder applied to the Bombay High Court for transferring the decree to Goa Court for execution and by an order dated 28-8-1963 the decree was transferred to the Goa Court for execution. The execution application before the Executing Court at Panjim filed on 21-1-1964 was dismissed on 26-4-1965, holding that the decree transferred to it by the Bombay High Court was not executable. An appeal was preferred to the Additional Judicial Commissioner on 1-6-1965 and the appellant Judgment-debtor filed his reply. During the pendency of the appeal, the Code of Civil Procedure was extended to Goa on 15-6-1966 by the Goa, Daman and Diu Extension of the Code of Civil Procedure and Arbitration Act (30) of 1965 and repealing the Portuguese Code. The Additional Judicial Commissioner by its order

dated 28-6-1967 held that in view of Art. 261(3) of the Constitution, the decree passed by the Bombay High Court could not be treated as nullity and, was therefore, executable.

On appeal by certificate, the appellant/judgment-debtor contended (1) that the decree passed by the Bombay High Court qua Goa Court was a nullity being a decree of a foreign court. Even if the decree was not a nullity it could be executed by a Goa court if the original decree had been approved by the Goa Court under s. 50 of the Portuguese Code; (2) that the Bombay High Court transferring the decree for execution to the Goa Court under ss. 38 and 39 of the C.P.C. was without jurisdiction inasmuch as the C.P.C. had not been applied to Goa when the order of transfer was passed. (3) that as the provisions of the C.P.C. were applied to Goa after the order of the Execution Court was passed and a vested right had accrued to the appellant/judgment debtor the decree continued to be inexecutable and could not be validated by Art. 261(3) of the Constitution.

The respondent/deGREE-holder contended (1) that inasmuch as the judgment debtor had appeared and participated in the suit for some time the decree passed by the Bombay High Court could not be said to be a nullity (ii) that as the C.P.C. was made applicable while the appeal was pending before the Additional Judicial Commissioner, Goa the decree became clearly executable and the order of transfer of the decree by the Bombay High Court stood validated. and (iii) that in view of the provisions of Art. 261(3) of the Constitution of India, there was no bar to the execution of the decree, which was passed by a court which was in the territory of India.

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Dismissing the appeal, the Court,

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HELD: (1) Where a party appears before the court, the decree of the court, even if it is a foreign court is not a nullity. [154-D]

Raj Rajendra Sardar Maloji Marsingh Rao Shitole v. Sri Shankar Saran and others, [1963] 2 S.C.R. 577, distinguished and held not applicable.

Shaligram v. Daulat Ram, [1963] 2 S.C.R. 574 and Lalji Raja & Sons v. Firm Hansraj Nathuram, [1971] 3 S.C.R. 815, applied.

(2) The right of the judgment-debtor to pay up the decree passed against him cannot be said to be a vested right, nor can the question of executability of the decree be regarded as a substantive vested right of the judgment-debtor. A fortiorary, the execution proceedings being purely a matter of procedure it is well-settled that any change in law which is made during the pendency of the cause would be deemed to be retrospective in operation and the Appellate Court is bound to take notice of the change in law. The Additional Judicial Commissioner was competent to take notice of the change in the law. [154 E-F, 155 G]

Mohanlal Chunilal Kothari v. Tribhovan Haribhai Tamboli, [1963] 2 S.C.R. 707, 715-716. Gummalapura Taggina Matada Kotturwami v. Setra Veerava and others, A.T.R 1959 S.C. 577, 579 and Jose De Costa and another v. Bascora Sedashiva Sinai Naroornin and others, A.I.R. 1975 S.C. 1843, 1849, followed.

(3) The proposition adumbrated viz., that the executability of the decree was a vested right which could not be taken away by the applicability of the Code of Civil Procedure to Goa during the pendency of the appeal is wrong,

since the executability of the decree could not be considered to be a vested right
[155F-G]

Lalji Raja and Sons. v. Firm Hansraj Nathuram [1971] 3 S.C.R. 815, followed.

(4) The contention that as the Code of Civil Procedure was not applicable to Goa at the time when the Bombay High Court passed the order transferring the decree to the Goa Court, the order of transfer was absolutely without jurisdiction was wrong.[156 C-D]

As the decree was passed by the Bombay High Court, s. 38 of the Code of Civil Procedure would clearly apply and the decree passed by the Bombay High Court was not a foreign decree. It is true that at the time when the Bombay High Court passed the order of transfer, the Code of Civil Procedure had not been applied to Goa. But, that does not put the respondent/decreed-holder out of Court. The decree could be transferred and was valid and executable. But, because of infirmity, it could not be executed so long as the C.P.C. was not made applicable to Goa. Thus, the only bar which stood in the way of the execution of the decree was the non-applicability of the provisions of the C.P.C. to Goa. This was, however, not an insurmountable bar or an obstacle and the bar or the obstacle disappeared the moment the Code of Civil Procedure was applied to Goa on 15-6-1966.
[156 D-F]

HELD FURTHER: (5) The instant case is a fit case in which the doctrine A of eclipse would apply and the wall or the bar which separated Bombay from Goa having disappeared, there was no impediment in the execution of a decree. The decree lay dormant only so far as no bridge was built between Bombay and Goa but as soon as the bridge was constructed in the shape of the application of the provisions of the Code of Civil Procedure to Goa the decree became at once executable. [156 F-G]

(6) In the instant case, the decree passed by the Bombay High Court having been passed by a Court of competent jurisdiction and not being a nullity because the judgment-debtor had appeared and participated in the proceedings of the Court to some extent, and the order of transfer under s. 38 of the Code of Civil Procedure also not having suffered from any inherent lack of jurisdiction, the decree became enforceable and executable as soon as the Code of Civil Procedure was applied to Goa. [157 E-F]

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Bhagwan Shankar v. Rajaram Bapu Vithal, A.I.R. 1951 Bom. 125, 127, approved.

(7) Art. 261(3) of the Constitution enjoins that a decree shall be executable in ally part of the territory of India, according to law. In the instant case, the decree was passed by the Bombay High Court after the Constitution came into force and Art. 261(3) would apply to the decree passed by the Bombay High Court. The Article would also apply to Goa because at the time when the application for execution was made in Goa Court, the Constitution had already been made applicable to that State also. [158 C-D]

(8) It is true that at the time when the Executing Court dismissed the suit of the decree holder/respondent, the Code of Civil Procedure had not been applied and the Portuguese Code continued to apply but after the application of the Code of Civil Procedure by virtue of the Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration) Act, 1965. the Portuguese Code which was in force in Goa was clearly repealed and the present case does not fall within any of the clauses mentioned in the saving

provisions of s. 4 of the Act. Thus, when the Civil Procedure Code was made applicable to Goa during the pendency of the appeal, the appellate Court, namely, the Additional Judicial Commissioner was bound to decide the matter in accordance with the law that was in force. Hence, the contention that the matter in accordance with the law that was in force. Hence, the contention that the words "according to law" in Art. 261(3) would mean that the decree would be executable only in accordance with the law in force in the Portuguese Code is not correct. [158 B-F]

[Jose De Costa and another v. Bascore Sadashiva Sinai Narcornin and others, A.I.R. 1975 S.C. 1843, 1849 followed.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 909 of 1968.

(From the judgment and order dated the 28th June, 1967 of the Judicial Commissioner's Court of Goa, Daman and Diu in Civil Appeal No. 105 of 1965).

B. N. Lokur and A. G. Ratnaparkhi for the appellant.

D. V. Patel and P. N. Bhardwaj for the respondent.

The Judgment of the Court was delivered by-

FAZAL ALI, J. This is a judgment debtor's appeal on a certificate of fitness granted by the Additional Judicial Commissioner, Goa, Daman & Diu and arises under the following circumstances.

The decree holder/respondent had brought a suit on the original side of the Bombay High Court being Suit No. 203 of 1956 against the appellant/judgment debtor for recovery of certain amount of money. The Bombay High Court passed a decree for Rs. 65,953.79 on June 29, 1960. In the suit brought by the decree-holder/respondent summons were served on the defendant/judgment debtor who filed his written statement and thereafter absented himself and did not take any part in the proceedings of the Court. On December 20, 1961 Goa became a part of India and was made a Union Territory of India by the Constitution (Twelfth Amendment) Act, 1962 passed on March 27, 1962. Thereafter the decree-holder respondent applied to the Bombay High Court for transferring the decree to Goa Court for execution. This prayer was allowed by the Bombay High Court and by its order dated August 28, 1963 the decree was transferred

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to the Goa Court for execution, In pursuance of the order of the Bombay High Court the decree-holder filed an execution suit before the Executing Court at Panjim on January 21, 1964. The Executing Court however by its order dated April 26, 1965 held that the decree transferred to it by the Bombay High Court was not executable and accordingly dismissed the execution. Thereafter the decree-holder filed a memo of appeal before the Additional Judicial Commissioner on June 1, 1965 and the appeal was admitted on June 5, 1965. On February 24, 1967 the judgment debtor/appellant filed his reply. While the appeal was pending before the Additional Judicial Commissioner the Code of Civil Procedure' was extended to Goa on June 15, 1966. Accordingly the Additional Judicial Commissioner by its order dated June 28, 1967 held that the decree was executable and he accordingly remitted the case to the Executing Court for proceeding in accordance with the law. The Additional Judicial Commissioner also held that in view of Art. 261(3) of the Constitution of India the decree passed by the Bombay High Court could not be treated

to be a nullity and was, therefore, clearly executable.

In support of the appeal Mr. B. N. Lokur submitted three main contentions before us:

- (1) that the decree passed by the Bombay High Court qua Goa Court was a nullity being a decree of a foreign Court. Even if the decree was not a nullity it could be executed by a Goa Court if the original decree had been approved by the Goa Court under s. 50 of the Portuguese Code;
- (2) that the order of the Bombay High Court transferring the decree for execution to the Goa Court under ss. 38 & 39 of the Code of Civil Procedure was without jurisdictions in as much as the Code of Civil Procedure had not been applied to Goa. When the order of transfer was passed; and
- (3) that as the provisions of the Code of Civil Procedure were applied to Goa after the order of the Executing Court was passed and a vested right had accrued to the appellant/judgment debtor the decree continued to be inexecutable and could not be validated by Art. 261(3) of the Constitution of India.

Mr. D. V. Patel appearing for the respondent/decreed-holder submitted that as the judgment-debtor had appeared and had participated in the suit for some time the decree passed by the Bombay High Court could not be said to be a nullity. Secondly it was contended that as the Code of Civil Procedure was made applicable while the appeal was pending before the Additional Judicial Commissioner, Goa, the decree became clearly executable and the order of transfer of the decree by the Bombay High Court stood validated. Thirdly it was argued that in view of the provisions of Art. 261(3) of the Constitution of India there was no bar to the execution of the decree which was passed by a Court which was in the territory of India.

The sheet-anchor of the argument of the learned counsel for the appellant/judgment-debtor, that the decree passed by the Bombay

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High Court was a nullity either on the ground that it was passed by a foreign Court or on the ground that the transfer was invalid under s. 38 of the Code of Civil Procedure, was the decision of this Court in *Raj Rajendra Sardar Maloji Marsingh Rao Shitole v. Sri Shankar Saran and Ors.*(1). In that case it appears that the appellant had instituted a suit in the Court in Gwalior State in May 1947. The respondents did not appear before the Court and the Gwalior Court passed a decree ex parte in November 1948. On September 14, 1951 the Gwalior Court transferred the decree for execution to Allahabad, as a result of which the appellant before the Supreme Court filed an application for execution of the decree before the Allahabad Court. It was mainly contended before this Court that the decree being that of a foreign Court was a nullity and the execution application was not maintainable. In these peculiar circumstances this Court, after considering the entire law on the subject, concluded as follows:

"Our conclusion therefore is that the Allahabad Court had no power to execute the decree either under section 3 or under ss. 43 or 44 of the Code of Civil Procedure. Therefore, even if the decree was not a foreign decree, the decree-holder's application for

execution was rightly dismissed.

An analysis of Shitole's case (supra) would clearly show that the facts in that case are clearly distinguishable from the facts in the present case and there are indeed a large number of distinguishing features in the case indicated above which are not at all applicable to the present case. In the first place the decree in Shitole's case(1) was admittedly passed by the Gwalior Court in 1947 when Gwalior being a princely State the Court which passed the decree was undoubtedly a foreign Court. Secondly, the judgment-debtors/defendants did not appear before the Gwalior Court at all as a result of which an ex parte decree was passed. According to Private International Law it is well settled that an ex parte decree of a foreign Court is a nullity if the party against whom a decree is passed does not appear at all and does not take part in the proceedings of the Court. Thirdly, it would appear that the provisions of Art. 261(3) of the Constitution would not apply to the facts of Shitole's case(1) because the constitutional provisions not being retrospective they could not apply to decrees passed before the coming into force of the Constitution. In view of these circumstances therefore it cannot be said that Shitole's case(1) referred to above is of any assistance to the appellant in deciding the issues involved in this case.

On the other hand the decision in Shaligram v. Daulat Rant(2) appears to be directly in point so far as the facts in the present case are concerned. In that case also a decree was passed by the Bombay High Court which was in the territory of India and to which the provisions of the Code of Civil Procedure applied. The appellant appeared before the Court and applied for leave to defend and thereafter absented himself. The decree was thereafter transferred to the Court

(1) [1963] 2 S.C.R. 577. (2) [1963] 2 S.C.R. 574.

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of District Judge, Bhir in Hyderabad State. This Court held that the decree was executable and observed as follows:

"A person who appears in obedience to the process of a foreign Court and applies for leave to defend the suit with out objecting to the jurisdiction of the Court when he is not compellable by law to do so must be held to have voluntarily submitted to jurisdiction of such Court Shaikh Atham Sahib v. David Sahib [1909] I.L.R. 32 Mad. 469. Therefore it cannot be said that this decree suffered from the defects which a foreign ex-parte decree without such submission would suffer from. The order for transfer was made at a time when the Indian Code of Civil Procedure became applicable to the whole of India including the former territories of Hyderabad State."

In Lalji Raja & Sons v. Firm Hansraj Nathuram(1) this Court reiterated the view taken in Shaligram's case (supra). It was also pointed out in the aforesaid case that where a party appears before the Court the decree of the Court even if it is a foreign Court is not a nullity.

Learned counsel appearing for the appellant however submitted that since the Code of Civil Procedure was not applicable to Goa the decree became inexecutable and this being a vested right could not be taken away by the application of the Code of Civil Procedure to Goa during the pendency of the appeal before the Additional Judicial Commissioner. It seems to us that the right of the judgment-debtor to pay up the decree passed against him cannot be said to be a vested right, nor can be question of executability of the decree be regarded as a substantive

vested right of the judgment-debtor. A fortiori the execution proceedings being purely a matter of procedure it is well settled that any change in law which is made during the pendency of the cause would be deemed to be retro-active in operation and the Appellate Court is bound to take notice of the change in law. In Moharllal Chunilal Kothari v. Tribhowan Haribhai Tamboli(2) it was clearly ruled by this Court that the Appellate Court was bound to apply the law as it was found on the date of the judgment. In this connection this Court observed as follows:

"But it was during the pendency of the suit at the appellate stage that the second notification was issued cancelling the first. Hence, the Court was bound to apply the law as it was found on the date of the judgment. Hence, there is no question of taking away any vested rights in the land lords."

(1) [1971] 3 S.C.R. 815

(2) [1963] 2 S.C.R. 707, 715-716.

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To the same effect is the decision of this Court in Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva and others(1) where this Court observed as follows:

"It is well settled that an appellate Court is entitled to take into consideration any change in the law (vide the case of Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri -1940 FCR 84)" B

A similar view was taken by a recent decision of this Court in Jose De Costa and another v. Bascora Sadashiva Sinai Narcornin and others(2) where this Court observed as follows:

"Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well established principles. The first is that "while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment" (see Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commr.-54 Ind. App. 421 (AIR 1927 PC 242). The second is that a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit."

In these circumstances, therefore, we are unable to accede to the contention of the appellant that the Additional Judicial Commissioner was not competent to take notice of the change in the law.

As regards the argument of the learned counsel for the appellant that the executability of the decree was a vested right which could not be taken away by the applicability of the Code of Civil Procedure to Goa during the pendency of the appeal, the decision of this Court in Lalji Raja & Sons' case (supra) is a clear authority against the pro position adumbrated by the learned counsel for the appellant. In that case this Court appears to have considered this point in all its comprehensive aspects and was of the opinion that the executability of the decree could not be considered to be a vested right. In this connection this Court made the following observations:

"Therefore the question for decision is whether the non executability of the decree in the Morena court under the law in force in Madhya Bharat before the extension of 'the Code' can be said to be a right accrued under the repealed law. We do not think that even by straining the language of the provision it can be said that the non-executability of

(1) A.I.R. (1959) S.C., 577, 579 (2) A.I.R. 1975 S.C. 1843, 1849.

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a decree within a particular territory can be considered as a privilege..... All that has happened in view of the extension of 'the Code' to the whole of India in 1951 is that the decree which could have been executed only by courts in British India are now made executable in the whole of India. The change made is one relating to procedure and jurisdiction..... It was the invalidity of the order transferring the decree to the Morena court that stood in the way of the decree-holders in executing their decree in that court on the earlier occasion and not because of any vested rights of the judgment-debtors By the extension of the 'the Code' to Madhya Bharat, want of jurisdiction on the part of the Morena court was remedied that court is now made competent to execute the decree."

It was then argued that as the Code of Civil Procedure was not applicable to Goa at the time when the Bombay High Court passed the order transferring the decree to the Goa Court, the order of transfer was absolutely without jurisdiction. We are, however, unable to agree with this contention. To begin with, as the decree was passed by the Bombay High Court, s. 38 of the Code of Civil Procedure would clearly apply because the decree passed by the Bombay High Court was not a foreign decree. It is true that at the time when the Bombay High Court passed the order of transfer, the Code of Civil Procedure had not been applied to Goa. But that does not put the respondent/decreet-holder out of Court. The decree could be transferred and was valid and executable. But because of an impediment

or an infirmity it could not be executed so long as the Code of Civil Procedure was not made applicable to Goa. Thus the only bar which stood in the way of the execution of the decree was the non-applicability of the provisions of the Code of Civil Procedure to Goa. This was, however, not an insurmountable bar or an obstacle and the bar or the obstacle disappeared the moment the Code of Civil Procedure was applied to Goa on June 15, 1966.- It is common ground that this was done during the pendency of the appeal before the Additional Judicial Commissioner passed the impugned order on June 28, 1967. In these circumstances, therefore, it seems to us that this is a fit case in which the doctrine of eclipse would apply and the wall or the bar which separated Bombay from Goa having disappeared there was any impediment in the execution of the decree. The decree lay dormant only so far as no bridge was built between Bombay and Goa but as soon as the bridge was constructed in the shape of the application of the provisions of the Code of Civil Procedure to Goa the decree became at once executable.

In Bhagwan Shankar v. Rajaram Bapu Vithal(1) Chagla. C.J. as he then was, while delivering the opinion of the Full Bench of the Bombay High Court, observed as follows:

"Therefore, as far as this particular decree was concerned as the defendant, we are assuming, did not submit to the

(1) A.I.R. 1951 Bom. 125. 127.

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jurisdiction of the Sholapur Court, quae the Akalkot Court, A the judgment of the Sholapur Court was a foreign judgment passed by a Court not of competent jurisdiction & therefore the decree could not be executed in the Akalkot Court so long as the Sholapur Court continued to be a foreign Court. But once it is conceded that the decree was not a nullity & it was valid & binding as far as the Sholapur Court was concerned then there is no difficulty. with respect, in understanding & appreciating the judgment which we have to consider in this Full Bench, because if the character of the Akalkot Court changes & if the status of the defendant alters because of that fact, then the impediment which was initially there in the decree being enforced in the Akalkot Court disappears & the decree which was unenforceable till that change came about becomes enforceable & executable in the Akalkot Court. This is nat in any way violating private international law. Private international law remains the same. But under the circumstances of the case the Sholapur Court no longer being a foreign Court quae the Akalkot Court, the question of private international law does not arise at all. The decree is then being executed under the Municipal Law & clearly under the Municipal Law the decree D is executable as it has been passed by a Court of competent jurisdiction."

It would appear therefore that an identical phenomenon had taken place in the case before the Bombay High Court and the Full Bench held that the moment the decree became executable and enforceable the status of the defendant/judgment-debtor was altered and the decree became executable. On a parity of reasoning, therefore, in the present case also the decree passed by the Bombay High Court having been passed by a Court of competent jurisdiction and not being a nullity because the judgment-debtor had appeared and participated in the proceedings of the Court to some extent, and the order of transfer under s. 38 of the Code of Civil Procedure also not having suffered from any inherent lack of jurisdiction, the decree became enforceable and executable as soon as the Code of Civil Procedure was applied to Goa. As we have indicated above it was the duty of the Appellate Court, namely the Additional Judicial Comm- sioner, to take note of the change in law, namely, the applicability of the Code of Civil Procedure to Goa and the repeal of the Portuguese Code which was in force before the provisions of the Code of Civil Procedure were applied. The Additional Judicial Commissioner was, therefore, fully justified in taking the view that the decree was executable and the bar of inexecutability came to an end, when the provisions of the Code of Civil Procedure were applied to Goa.

Mr. Patel appearing for the respondent submitted an alternative argument that even if the transfer of the decree under s. 38 of the Code of Civil Procedure was not valid, under the Portuguese Code there was no provision which required transfer of the decree to that Court before the same could be executed. Counsel for the appellant objected to this argument on the ground that it was never raised at

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any stage of the case and being a question of fact as to whether or not there was any such provision in the Portuguese Code it should not be entertained. In these circumstances, we do not think it necessary to go into this question, particularly when the order of the Additional

Judicial Commissioner can be upheld on other grounds mentioned by us.

Finally it appears that this case is clearly covered by the principles contained in Art. 261 (3) of the Constitution of India which runs thus:

"Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law."

This is a constitutional provision which enjoins that a decree shall be executable in any part of the territory of India according to law. It is obvious that in the instant case the decree was passed by the Bombay High Court after the Constitution came into force and this Article would, therefore, clearly apply to the decree passed by the Bombay High Court. The article would also apply to Goa because at the time when the application for execution was made in a Goa Court, the Constitution had already been made applicable to that State also. Mr. Lokur counsel for the appellant, however, submitted that the words 'according to law' in Art. 261(3) would clearly show that the decree would be executable only in accordance with the law in force, i.e. the Portuguese Code. It is true that at the time when the executing Court dismissed the suit of the decree-holder/respondent the Code of Civil Procedure had not been applied and the Portuguese Code continued to apply but after the application of the Code of Civil Procedure by virtue of the Goa, Daman and Diu (Extension of the Code of Civil Procedure and the Arbitration) Act, 1965 (Act 30 of 1965) the Portuguese Code which was in force in Goa was clearly replaced and the present case does not fall within any of the clauses mentioned in the saving provisions of s. 4 of the Act. Thus when the Code of Civil Procedure was made applicable to Goa during the pendency of

the appeal, the Appellate Court, namely, the Additional Judicial Commissioner, was bound to decide the matter in accordance with the law that was in force, namely, the Code of Civil Procedure. In Jose Da Costa's case (supra) this Court, while dwelling upon the applicability of the Portuguese Code, observed as follows:

"Thus considered, it is clear that the procedural provisions of the Portuguese Civil Code were no longer applicable to this case with effect from 15-6-1966. If that be the correct position, there is no legal hurdle in the way of the appellant to the reagitation in this Court of the issue as to prescription left undecided by the court below.

* * * * *

To sum up, since on and from 15-6-1966 the Portuguese law relating to Reclamacao stood repealed and no substantive right or obligation had been acquired or incurred under

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that repealed law within the meaning of the first proviso to S. 4(1) of Act 30 of 1965, the appellants cannot be debarred from canvassing in this appeal under Article 136, the plea of prescription notwithstanding the fact that they did not file any Reclamacao in the Court of the Judicial Commissioner. We therefore negative the preliminary objection raised by the respondents."

For these reasons, therefore, we find ourselves in complete agreement with the view taken by the Additional Judicial Commissioner and hold that the decree passed by the Bombay High Court was clearly executable. The Executing

Court will now proceed in accordance with the law as directed by the Additional Judicial Commissioner.

The appeal fails and is accordingly dismissed but in view of the somewhat uncertain legal position we leave the parties to bear their respective costs in this Court.

S.R

Appeal dismissed.

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JUDIS