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CERTAIN FOREIGN COURT JUDGEMENTS NON-BINDING

On August 5, 2024, the Supreme Court (“**SC**”), in the *Roban Rajesh Kothari* case,¹ reiterated that courts in India are not bound by judgements passed by foreign courts that are violative of Indian law.

Brief Facts

Rohan Rajesh Kothari (“**RRK**”) obtained order from the District Court, Fourth Judicial District, Family Court Division, State of Minnesota, U.S.A. in July 2023 (“**Order**”) granting him custody of his two girl children, who were living with his wife. RRK had filed a writ of *habeas corpus* before the High Court of Gujarat (“**HC**”) seeking enforcement of the Order. The HC dismissed the writ. Aggrieved, he approached the SC through a Special Leave Petition (“**SLP**”).

SC’s Judgement and Reasoning

The SC observed:

RRK had not approached the US Courts or the Indian Courts (i.e., the HC and SC) with clean hands.

A foreign judgment violative of Indian law is not conclusive between the parties and thus courts in India are not bound to follow it.

The foreign judgement must be in compliance with Section 13(f) of the Civil Procedure Code, 1908, which prescribes that a foreign judgement shall be conclusive with respect to a matter directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except where:

- a. It has not been pronounced by a court of competent jurisdiction.
- b. It has not been given on the merits of the case.
- c. It appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable.
- d. The proceedings in which the judgment was obtained are opposed to natural justice.
- e. It has been obtained by fraud.
- f. It sustains a claim founded on a breach of any law in force in India.

The SC also opined that the Order was not binding on the children and RRK’s “*effort to secure temporary custody of the children through a Writ of Habeas Corpus, especially when both the children are girls and are living with their mother, can neither be entertained nor appreciated.*”² It dismissed the SLP but ordered that the interim arrangements imposed shall continue to operate as till the custody issue is resolved by a court of competent jurisdiction in India.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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¹ *Roban Rajesh Kothari. v. State of Gujarat and Ors.*, 2024 LiveLaw (SC) 579.

² Paragraph 1 of the Judgement.