IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE C M JOSHI

RFA NO. 220 OF 2015

BETWEEN:

M/S ASSOCIATED TEXTILES INC
LAWS OF ILLINOIS, USA,
HAVING ITS REGISTERED OFFICE AT 7,
CAREY AVENUE, STRCATOR, ILLINOIS – 61364, USA
REPRESENTED BY RAJAMURUGAN S.

…APPELLANT

(BY SRI. KPS, PALANIVEL RAJAN., SENIOR COUNSEL FOR
SRI. SATHIES KUMAR., ADVOCATE AND
SRI.A VELAN., ADVOCATE)

AND:

1. PALANISWAMY VEERARAJA,
AGED ABOUT 58 YEARS,
S/O PALANISWAMY,
1178, 12TH MAIN ROAD,
HAL II STAGE, INDIRANAGAR,
BANGALORE – 560 008.

2. M/S KAY PEE EXPORTS
1178, 12TH MAIN ROAD,
HAL II STAGE, INDIRANAGAR,
BANGALORE – 560 008.
REPRESENTED BY PALANISWAMY VEERARAJA.

…RESPONDENTS

(BY SRI.NURUDDIN KHETTY., ADVOCATE FOR R1 & R2)

THIS RFA IS FILED UNDER SEC.96 OF CPC., AGAINST THE JUDGEMENT AND DECREE DATED 15.11.2014 PASSED IN O.S.NO.590/2005 ON THE FILE OF THE XXXIII ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISMISSING THE SUIT FOR RECOVERY OF MONEY.

THIS RFA HAVING BEEN RESERVED FOR ORDER, COMING ON FOR PRONOUNCEMENT THIS DAY, **KRISHNA S. DIXIT.J.,** MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE C M JOSHI

CAV JUDGEMENT

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This appeal by the plaintiff seeks to call in question the Judgement & Decree dated 15.11.2014 whereby its money suit in O.S.No.590/2005 has been dismissed by the learned XXXIII Addl. City Civil Judge (CCH-33), Bangalore.

2. A BRIEF CASE OF THE APPELLANT:

2.1 Appellant is a 'company' incorporated under the laws of Illinois, USA; it is represented by its Vice President. The Respondents Nos. 1 & 2 had agreed to venture a business jointly carried on for profit. Appellant had contributed equity shares and had made huge investments for the development of business. However, the Respondents refused to disclose the accounts and share the profits earned with the Appellant, eventually resulting into the institution of Complaint No.01 C 6249 (nearly resembling a suit in our legal system) in the District Court, Northern District of Illinois, USA, seeking recovery of money in a sum of 226824.00 US Dollors with 18% interest per annum.

2.2 The Complaint was essentially structured on four grounds viz., breach of joint venture agreement; fraudulent inducement; tortuous interference with contract, and unjust enrichment. After service of notice, Respondents having entered appearance through their advocate had moved an application seeking dismissal of the complaint and the said application came to be rejected after noting the objections of the Appellant. Thereafter, on 17.09.2002 the Respondents herein filed their Counterclaim along with defence. On 06.02.2003, they filed answer to the Appellant's claim. Court has ordered for Settlement Task.

2.3 No settlement having taken place, the foreign court directed the 1st Respondents to appear for his deposition before 15.05.2003. However, he had sought for extension of time till 15.09.2003 and court granted the same. Despite that, he failed to appear before the court on 15.09.2003 for deposition. His request for further extension upto 01.10.2003 and later upto 15.12.2003 was also granted. On 16.12.2003, court favoured Appellant's motion for production of documents. In the meanwhile, because of non co-operation of the Respondents, their counsel retired from the case on 19.11.2003 with leave of the court. This was intimated to the Respondents on the very same day.

2.4 Since Respondents failed to appear and co-operate in the proceedings, the Appellant in addition to

taking out a motion for 'final judgement by default', had filed his affidavit evidence. The foreign court vide order dated 03.12.2003 recommended to enter judgement against the Respondents who continued in default. Still there was no response from their side, eventually resulting into a 'judgement by default' being passed on 02.02.2004 for the recovery of the sum claimed. This was followed by a decree dated 24.08.2004 which was essentially founded on the ground of tortuous interference with contract.

2.5 Appellant filed the subject suit i.e., O.S.No.590/2005 on 20.01.2005 for the recovery of subject money with interest, as mentioned above. Respondents after service of summons entered appearance through their counsel and resisted the suit by filing the Written Statement. On the basis of pleadings of the parties and the documents accompanying the same, the court below framed the following three principal issues:

> *"1. Whether the plaintiff proves that the judgement of the foreign court on which he is relying is conclusive against the defendants?*
>
> *2. Whether the defendant proves that this court has not territorial jurisdiction to try the suit and thereby the suit is not maintainable?*
>
> *3. Whether the plaintiff is entitled to the suit claim?"*

Subsequently, on the insistence of the Appellant, the following additional issue was framed:

"1. Whether the defendants prove that foreign judgement on which plaintiff is relying is not conclusive as it comes in any one of (a) to (f) of section 13 CPC as contended in their written statement?"

2.6 To prove his case, Dr.Veerasikku Bommiasami got examined as PW1 and in his deposition as many as 24 documents came to be marked as Ex.P1 to P24. From the side of Respondentss, one Mr. Palaniswamy Veeraraja was examined as DW1 and in his deposition, 5 documents came to be marked as Exs.D1 to D5. Learned Judge of the court below after hearing the parties and considering the evidentiary material on record, in the light of their pleadings has entered the impugned Judgement & Decree, whereby the subject suit is negatived. That is how the present appeal is at our hands.

3. Learned counsel appearing for the Appellants made the following submissions in support of appeal:

3.1 The Trial Court failed to see that the subject foreign judgement is made on merits, battle lines having been drawn up on the filing of pleadings by both the sides and motion of the Respondents seeking dismissal of the 'complaint' having been rejected by the foreign court.

3.2 Although Sec.44-A of CPC 1908 is not invokable in the absence of a reciprocatory arrangement between India and USA, Sec.13 r/w Sec.14 made the subject foreign judgements conclusive between the parties and

therefore Trial Court is not justified in treating them as unworthy of evidentiary value.

3.3 Regardless of evidentiary worth of subject foreign judgement, there was other abundant evidentiary material on record and therefore suit ought to have been decreed on that basis.

In support of his submission, he relies upon ***ALCON ELECTRONICS PVT. LTD., vs. CELEM S.A. OF FRANCE***[1].

4. Learned counsel appearing for the Respondents-defendants resists the appeal by making submission in justification of the impugned Judgement & Decree. He advanced the following contentions:

4.1 A foreign judgement which is not a product of direct adjudication of the matter does not attract Sec.14 or Sec.15 of CPC and therefore, does not have conclusive binding effect as between the parties.

4.2 The Appellant had structured his suit claim only on the basis of foreign judgement and therefore, all other evidentiary material if any, would pale into insignificance, battle lines having been drawn up accordingly.

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[1] (2017)2 SCC 253

In support of his contention, he too relies on certain Rulings & Law Lexicon which we will advert to, in due course.

5. We have heard the learned counsel appearing for the parties and we have perused the Paper Books of Appeal. In view of rival submissions the following questions arise for our consideration:

> *(i) Whether the foreign judgements in question do attract the general provision of Sec.13 of CPC and therefore bind parties to the native suit… ?*
>
> *(ii) Whether even when Sec.13 is not attracted, judgements of the kind do have absolutely no evidentiary value…?*
>
> *(iii) Whether there is evidence on record of the native suit independent of foreign judgements and therefore the said suit ought to have been decreed…?*

Our answers to the question nos. (i) & (iii) are in the affirmative and to question no.(ii) is in the negative in the light of following discussion:

6. AS TO LAW RELATING TO FOREIGN JUDGEMENTS:

6.1 Foreign judgement is defined by Sec.2(6) of CPC to mean a judgement given by a foreign Court. Ordinarily, they are a final determination of the dispute

and therefore interlocutory orders do not have the characteristics of a foreign judgements vide ***SARITA SHARMA vs. SUSHEEL SHARMA***[2]. Foreign court is defined by Sec.2(5) to mean a court outside India, not established or authorized by Central Government. Sec.13 makes a foreign judgement rendered on merits of the matter as conclusive between the parties, subject to six exceptions enlisted in the said provision. Thus, a foreign judgement must be understood to mean 'an adjudication by a foreign court upon a matter before it' and not the reasons for the order made by it, or otherwise, these provisions becomes inapplicable to an order of a foreign court where no reasons are given vide ***BRIJALAL RAMJEE DAS vs. GOVINDRAM GOBORDHANDAS***[3]. For ease of reference, the text of Sec.13 is reproduced below:

> ***"13. When foreign judgment not conclusive.***
>
> *A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties*

[2] AIR 2000 SC 1019

[3] AIR 1947 PC 192

under whom they or any of them claim litigating under the same title except--

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of [1] [India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in [1] [India].”

6.2 The text of principal part of Sec.13 r/w clause (b) makes it abundantly clear that a foreign judgement is not conclusive when it has not been rendered after adjudication of the matter, as rightly submitted by learned counsel appearing for the Respondents. Therefore, let us examine the text & tenor of the Illinois Court Judgements. The first judgement dated 02.02.2004 reads as under:

“UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION
No. 01 C 6249

Judge Guzman
Magistrate Judge Denlow

Docked on 9th February 2004

Associated Textiles, Inc
An Illinois Corporation.

Plaintiff

VS

Palaniswamy Veeraraja,
A Fokaypee (alien) Individual
And Kaypee Exporters,
A foreign (alien) concern

Defendant

- - - -

Judgement order

This matter coming before the court on plaintiffs motion for entry of final judgement by default against defendants as a sanction for their failure to appear and cooperate in discovery and for prove up instanter ("Motion"), due notice having been given, the court having reviewed the motion and finding its sufficient to support entry of judgement, and the court finding that it has jurisdiction over the parties and the subject matter herein.

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:-

1. Judgement is entered in favour of plaintiff Associated Textile, Inc and against defendants Palaniswamy Veeraraja and KayPee Exporters, jointly and severally, on counts II (Accounting Breach of Joint Venture Agreement), (Accounting Fraudulent inducement), and IV (Accounting Unjust Enrichment) of plaintiffs complaint, in the total amount of TWO MILLION TWO HUNDRED SIXTY EIGHT THOUSAND TWO HUNDRED TWENTY - TWO DOLLARS AND FORTY SIX CENTS ($2,268,222,46) as follows:-

a. Compensatory damages of ONE MILLION ONE HUNDRED THIRTY FOUR THOUSAND ONE HUNDRED ELEVEN DOLLARS AND TWENTY THREE CENTS ($ 1,134,111.23) plus costs and post judgment interest at the statutory rate; Plus

b. Punitive damages of an additional ONE MILLION ONE HUNDRED THIRTY FOUR THOUSAND ONE HUNDRED ELEVEN DOLLARS AND TWENTY THREE CENTS ($ 1,134,111.23).

2. Further, defendants Palaniswamy Veeraraja and KayPee Exporters are enjoined and ordered to provide plaintiff Associated Textile, Inc, a full and complete accounting of all revenues. profits and proceeds from defendant KayPee Exporters sales of textiles to the US and Canada from 01/01/1996 to present.

3. Further, a constructive trust is hereby imposed for the benefits of plaintiff Associated textiles, Inc, upon (a) one third of the profits shown by an accounting to have been wrongfully appropriated and retained by defendants Palaniswamy Veeraraja and / or KayPee Exporters (b) the proceeds therefrom and / or (c) the interest or other return which the defendants earned or could have reasonably earned thereon.

4. Further, judgement is entered in favour of Plaintiff associated Textile, Inc, and against defendants Palaniswamy Veeraraja and KayPee Exporters, on all counts of defendants counterclaim. Defendants shall take nothing and are entitled to payment, credit or set off from plaintiff.

Pursuant to Fed R. Civ. P. 54 (b), the court finding that there is no just reason to delay entry of final judgement on the claims enumerated above, the courts directs that this be entered as a final judgement upon the docket as to those claims.

Date: 02/02/2004 *Sd/-*

HON. RONALD A GUZMAN,
Judge, United States District
Northern District of Illinois."

Similarly, the Supplemental Judgement dated 16.09.2004 reads as under:

"UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 01 C 6249

Judge Guzman
Magistrate Judge Denlow

Docketed Sep 20, 2004

Associated Textiles, Inc
An Illinois Corporation.

Plaintiff

VS

Palaniswamy Veeraraja,
A Fokaypee (alien) Individual
And Kaypee Exporters,
A foreign (alien) concern

Defendant

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SUPPLEMENTAL JUDGEMENT ORDER

This matter coming before the court on plaintiff's motion for entry of judgement (by default) against defendant Palaniswamy Veeraraja on complaint count III (Accounting: Tortious interference with contract) ("Motion") due notice having been given, the court having reviewed the motion and finding it sufficient to support entry of judgement, and the court finding that it has jurisdiction over the parties and the subject matter herein;

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Judgement is entered in favour of plaintiff associated Textile, Inc, and against defendant Palaniswamy Veeraraja (sometimes also spelled "Veeraraja") on Count III (accounting: Tortious interference with contract0 of plaintiff's complaint, in the total original judgement amount of TWO MILLION TWO HUNDRED SIXTY EIGHT THOUSAND TWO HUNDRED TWENTY TWO DOLLARS AND FORTY SIX CENTS. ($2,268,222.46) as follows:-

a) Compensatory damages of ONE MILLION ONE HUNDRED THIRTY FOUR THOUSAND ONE HUNDERED ELEVEN DOLLARS AND TWENTY THREE CENTS ($ 1, 134,111.23) plus costs and post judgement interest at the statutory rate, plus.
b) Punitive damages of an additional ONE MILLION ONE HUNDERD THIRTY FOUR THOUSAND ONE HUNDERED ELEVEN DOLLARS AND TWENTY THREE CENTS ($1, 134,111.23)

2. This supplemental judgement order represents only a same separate finding of liability for the sum of money awarded in the original judgement order, and awards no new or additional money.

3. Further, defendant Palaniswamy Veeraraja is enjoined and ordered to provide plaintiff Associated Textile, Inc, a full and complete accounting of all revenue, profits and proceeds from defendant KayPee Exporters sales of textiles to the US and Canada from 01/01/1996 to present.

4. Further, a constructive trust is hereby imposed for the benefit of plaintiff Associated Textile, Inc, upon (a) one third of the profits shown by an accounting to have been wrongfully appropriated retained and by defendants Palaniswamy Veeraraja and / or KayPee exporters (b) the proceeds therefrom, and / (c) the interest or other return which the defendants earned or could have reasonably earned thereon.

Pursuant to Fed. R. Civ. P 54 (b), the court finding that there is no just reason to delay entry of Final Judgement on the claims enumerated above, the court directs that this he earned as a Final Judgement upon the docket as to those claims.

Date: 09/16/2004 *Sd/-*
HON. RONALD A GUZMAN,
Judge, United States District
Northern District of Illinois."

6.3 A perusal of first judgement leaves no manner of doubt that the same have been entered against the Respondents *"as a sanction for their failure to appear and co-operate in discovery and for prove up instanter (Motion), due notice having been given …".* Similarly, a close reading of the Supplemental judgement also gives

the same impression inasmuch as, the first part therein itself reads: "*This matter coming before the court on plaintiff's motion for entry of judgement (by default) against defendant…".* The fact that the motion of the Respondents seeking dismissal of Appellant's claim came to be negatived by the Illinois Court or that the Respondents having filed their pleadings resisting the claim eventually resulted into the Appellant leading its Affidavit Evidence, would not make these judgements as having been rendered on merits of the matter. In Black's Law Dictionary, 5th Edition, 'Default judgement' is described this way: "*Under Rules of Civil Procedure, when a party against whom a judgment for affirmative relief is sought has failed to plead (i.e. answer) or otherwise defend, he is in default and a judgment by default may be entered either by the clerk or the court….".* Similarly, 'Judgement on merits' is explained as under:

> "*One rendered after argument and investigation, and when it is determined which party is in the right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point, or by default and without trial. A decision that was rendered on the basis of the evidence introduced.*

> *Normally, a judgment based solely on some procedural error is not a judgment on the merits….".*

6.4 Let us examine how courts have treated the idea of 'Judgement on merits':

(i) In ***KEYMER vs. P.VISVANATHAM REDDI***[4], High Court of Justice in England had granted a money decree on the ground that the defendant having failed to comply with an order to answer interrogatories, his defence was struck out. The plaintiff had sued the defendant on the basis of this foreign judgement. Madras High Court reversed the money decree given by the learned Single Judge. This was on the ground that the said judgement was 'not given on the merits of the case' within the meaning of Sec.13(b) of CPC. The Privy Council upheld the same observing as under:

> "*The whole question in the present appeal is whether, in the circumstances narrated, judgement was given on May 5, 1913, between the parties on the merits of the case. Now if the merits of the case are examined, there would appear to be, first, a denial that there was a partnership between the defendant and the firm with whom the plaintiff had entered into the arrangement; secondly, a denial that the arrangement had been made; and, thirdly, and a more general denial, that even if the arrangement had been made the circumstances upon which the plaintiff alleged that his right to the money arose had never transpired. No*

[4] 1916 Indian Appeals 6

single one of those matters was ever considered or was ever the subject of adjudication at all…"

(ii) In ***RAM CHAND v. JOHN BARTETT***[5], Chintamoni Pandhan v. Paika Samal, overruled.

"It cannot be said that the expression "judgment on the merits" implies that it must have been passed after contest and after evidence had been let in by both sides. An ex parte judgment in favour of the plaintiff may be deemed to be a judgment given on merits if some evidence is adduced on behalf of the plaintiffs ***and the judgment, however, brief, is based on a consideration of that evidence.*** *Where however no evidence is adduced on the plaintiffs side and his suit is decreed merely because of the absence of the Defendant either by way of penalty or in a formal manner, the judgment may not be one based on the merits of the case.*

"The broad proposition that any decree passed in absence of Defendant, is a decree on merits as it would be the same as if Defendant has appeared and conferred cannot be accepted. ***It cannot also be said that the decree was on merits as all documents as particulars had been endorsed with the statement of claim.*** *At stage of issuance of summons the Court only forms a prima facie opinion.* ***Thereafter Court has to consider the case on merits by covering into the evidence led and documents proved before it as per its rules. It is only if this is done that the decree can be said to be on merits.****"*

[5] 1909(3) Ind., Cas. 523

In the case before the Illinois Court, true it is that the Appellant had adduced his evidence. However, that has not been considered & treated while entering the judgements in question. As already mentioned above, the said judgements have been granted on default of the Respondents. That makes all the difference.

(iii) In ***A. N. AHDUL RAHMAN v. J. M. MAHOMED ALI***[6], an *ex parte* judgment of a foreign court where the judgement had been granted without taking the plaintiffs evidence but only on his pleadings in view of the absence of the defendant to appear and defend the suit, was considered as not a judgment on merit under section 13(b) of the Code of Civil Procedure. **The Court observed that a decision on merits involves the application of the mind of the Court to the truth or falsity of the plaintiffs case;** and therefore though a judgement passed after **a judicial consideration of the matter** by taking evidence may be a decision on the merits even though passed *ex parte*, a decision passed without evidence of any kind but passed only on the plaintiff's pleadings cannot be held to be a decision on the merits.

(iv) The Calcutta High Court has also come to a similar conclusion in the case of ***DERBY MCINTYRE & CO. LTD. v. MITTER & CO.***[7]. The Calcutta High Court said

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[6] AIR 1928 Rangoon 319

[7] (1935) 39 Cal WN 557

that a foreign judgment given by default under summary procedure in the absence of appearance by the Defendant and filing of any defence by him, **and without any consideration of the plaintiff's evidence, is not a judgment given on the merits of the case** and thus it comes under the exception contained in section 13(b) of the Code of Civil Procedure.

(v) In ***ALGEMENE BANK NEDERLAND NV v. SATISH DAYALAL CHOKSI***[8] at para 27 it is observed as under:

> *"In the case of **EAST INDIA TRADING CO v. BADAT AND CO**.*[9] *(Overruled by the Supreme Court on a different point) a Division Bench of Bombay High Court analysed the expression "given on the merits" appearing in sec.13(b) of CPC, held that for a decision to be given on the merits, the Tribunal giving the award should have considered merits of the matter and come to a decision. The expression does not mean that every decision given ex parte is necessarily a decision not on merits. It is only those cases where the courts for some reason or the other pass a judgment against a party without investigating the merits of the matter, that it could be said that the decision is not given on merits. The mere fact that the decision is ex parte, the mere fact that the defendant after being served does not choose to appear does not mean that an ex parte decision is a decision not on merits".*

The *ex parte* decision mentioned in the last five lines of above paragraph is not a judgement rendered in default

[8] 1989 SCC OnLine Bom 282
[9] AIR 1959 BOMBAY 414

but the one in which the court adverted to the pleadings and the evidence adduced by the plaintiff. Such a decision obviously is treated as the one rendered on merits of the matter.

(vi) In ***INTERNATIONAL WOOLEN MILLS vs. STANDARD WOOL (UK) LTD,***[10] the Apex Court having considered most of the above rulings along with many other *inter alia* surveyed the law relating to foreign judgement as contemplated u/s.13(b) of CPC and at para 19 observed: *"… that the decree would not be on merits if the court has not gone through and considered the case of the plaintiff and taken evidence of the witnesses of the plaintiff. It must also be noted that in this case the Court ultimately held that the decree concerned was not a decree on merits".* In fact, the text of the foreign judgement involved in the said case largely matches with that of the judgements of Illinois Court.

(vii) We hasten to add that had these judgements been rendered as "judgements on admission" as contemplated under Order XII Rule 6 of CPC, we would have repelled the contention that the said judgements are not on merits of the matter. However, that too is not the case here.

Thus, we are completely in agreement with Mr. Khetty learned counsel appearing for the Respondents that the

[10] (2001) 5 SCC 265

subject judgements of Illinois Court are not rendered on merits of the matter and therefore, cannot be treated as being conclusive between the parties. However this is not end of the matter.

7. AS TO FOREIGN JUDGEMENT BEING A PIECE OF EVIDENCE DE HORS SECTION 13 OF CPC :

7.1 Section 44A of CPC makes a foreign judgement directly executable in Indian Courts as if it has been rendered by them, subject to all just exceptions. In other words, one more suit need not be instituted on the same cause of action in Indian Court, if a foreign judgement has been obtained within the parameters of this provision. Section 13 read with Section 14 operates not on the principle of *res judicata* unlike Section 44A. Judgemetns covered under Section 13 are not *proprio vigor* are not executable in Indian Courts. Section 13 only makes them conclusive between parties thereto or anyone claiming under them. Thus, this provision in a sense enacts a rule of evidence, although arguably it may have some elements of doctrine of *res judicata*.

7.2 Section 13, subject to exceptions enumerated thereunder makes a foreign judgement rendered on merits conclusive proof of the matter in it and its production *per se* in the Indian Court is sufficient. This provision gives an artificial probative effect to it, and no evidence is allowed to be lead for combating that effect. When the law says that a particular kind of evidence would be conclusive, that fact can be proved either by that evidence or by some other evidence which the court permits or requires. When such other evidence is adduced, it would be open to the court to consider whether upon that evidence the fact exists or not. On the other hand, when evidence which is made conclusive is adduced, the court/tribunal has no option but to hold that the fact exists. There is no difference between 'conclusive proof' and 'conclusive evidence' vide **Somawanti v. State of Punjab** [11] A foreign judgement that does not attract the substantive part of Section 13 of CPC, would not enjoy the status of conclusive proof/evidence, cannot be disputed. However, this does not mean that such a judgement if adduced as a

[11] 1962 SCC OnLine SC 23

piece of evidence, cannot be looked into at all. This Section does not render such a judgement destitute of evidentiary value. In other words, a foreign judgement which is not a conclusive proof/evidence in terms of Section 13 when produced, its evidentiary value needs to be ascertained in the light of other material on record. No Rule of law or Ruling is cited before us to the contrary. Added, the pleadings of the parties before the foreign court, evidence adduced by them and orders made, can be produced in the proceedings before the domestic courts. The learned Judge of the court below fell in grave error in dismissing the suit on the predominant ground that the foreign judgements in question suffered the ignominy of Sec.13(b) of CPC. Had he looked into the admission of respondents as made in the pleadings filed in Illinois Court, at least in respect of money admittedly received by them in dollors, decree would have been granted, in the absence of proof of pleaded supply of goods. This we say because, the pleadings of the respondents filed in the Illinois Court have been produced by the appellant in the deposition of PW1 in Bangalore Court and that DW1 has

not denied their authenticity. In fact he admits in the deposition that he had filed them. It hardly needs to be stated that what is pleaded in the pleadings assumes a lot of importance inasmuch as it is they which draw the battle lines between the parties.

8. AS TO EVIDENTIARY MATERIAL PRODUCED IN THE SUIT IN BANGALORE COURT:

8.1 Appellant had filed the money suit on 20.01.2005. After service of notice, the Respondents being the defendants entered appearance through their counsel and filed the Written Statement resisting the suit. Based on the pleadings, issues & additional issues were framed as already mentioned above. On behalf of Appellant, Dr. Veerasikku Bommiasamy was examined as PW1 and in his deposition, the following evidentiary material was produced:

(i) Appellant's '*complaint*' vide Ex.P2 (Indian equivalent of money suit) in the Illinois Court. Summons issued to the defendants on 14.08.2001 is vide Ex.P3; it was served on the Respondents on 29.09.2001 and acknowledgement of service returned to the said court on 18.10.2001 vide Ex.P4. Copy of Motion dated 14.11.2001 seeking default

judgement vide Ex.P5. Docket entry mentioning 28.11.2001 for the appearance of U.S. Attorney on behalf of Respondents Ex.P6. Defendants entered appearance through their counsel on 28.11.2001 and made a Motion on 09.02.2002 vide Ex.P7 seeking dismissal of complaint. Appellant had filed his Response 31.01.2002 vide Ex.P8. The said Motion came to be negatived on 11.09.2002 vide Ex.P11. Respondents filed their Pleadings on 17.10.2002 and Counterclaim dated 06.02.2003 vide Ex.P12 resisting the complaint. Failure of settlement conference vide Ex.P13.

(ii) Discovery Orders were made by the foreign court in the matter and Respondents filed 'Motion for modification of Discovery Order seeking time till 17.10.2003' vide Ex.P14 and time was granted till 17.10.2003 vide order dated 14.05.2003. Foreign court order dated 14.05.2003 vide Ex.P15 granting time to the Respondents till 15.09.2003 for appearance for deposition. Failure of counsel for Respondents to appear for deposition on 15.09.2003 vide Ex.P16. Order dated 03.11.2003 allowing Appellant's Motion to compel production of documents vide Ex.P17. The counsel for Respondents sought permission to retire vide Ex.P18. Respondents' Letter dated 20.01.2004 permitting his advocate to retire from the case vide Ex.P19.

(iii) Respondents addressed a letter dated 21.11.2003 vide Ex.P20 to the Illinois Court that they were prevented from participating in the proceedings before the Foreign Court. Appellant's Motion dated 26.11.2003 vide Ex.P21 for default judgement. Foreign judgement dated 02.02.2004 vide Ex.P22; Supplement Judgement dated 16.09.2004 vide Ex.P24.

8.2 The Respondents in their Counterclaim filed in Illinois Court on 17.10.2002 have specifically admitted the transaction between the parties and the payment made by the Appellant. Paragraph Nos.1 to 4 therein read as under:

> *"1. Plaintiff Associated Textile, Inc. ("ATI") ordered textile goods from Defendants.*
>
> *2. ATI wire transferred $125,992.88 to Kaypee on July,5 1996, and paid Kaypee by Cashier's check dated April 22, 1997 another $30,000.00 for the textile goods that ATI had a ordered from defendants.*
>
> *3. These payments were sent as advance payments for the shipment of textile goods to be produced by Defendants and shipped to Plaintiff, as stated in the table below:*

S.No	*Invoice No. & Date*	*B/L No. & Date*	*Invoice Value in USD*
1.	*211/25.12.98*	*HDMU II US 304803/ 31.12.1998*	*17676.00*

2.	*326/20.06.00*	*MAA/MC/0016/00 3.7.2000*	*26625.60*
3.	*330/13.07.00*	*MAA/MC/0020/00 8.8.2000*	*30296.74*
4.	*356/30.12.00*	*CHN/FAL/CHI/0538 31.12.2000*	*87120.00*
		Total	*161718.34*

4. Defendants shipped the goods as ordered, and fulfilled all conditions precedent to payment."

The respondents did not enter the witness box in the Illinois Court to vouch their specific stand that they had supplied the goods and despite receiving the same remainder of the price which they had claimed in their Counterclaim was not paid. But other payment made by the appellant has been admitted. In his cross examination dated 24.09.2012 in the suit in Bengaluru, DW1 has stated:

"….It is true that I have produced Ex.D1 to D4; none of these documents disclose the endorsement of plaintiff, signature or manner of delivery of goods. Witness volunteers only filed the documents in Customs office and it is not requirement to be in overseas contract transactions…."

If the version of respondents as to supply of goods is not vouched from the evidentiary material on record, the payment made by the appellant stands otherwise

admitted. Added, the conduct of the respondents in not raising the demand for the payment of remainder of the price or entering into some correspondence also adds to the improbabalization of their stand. That being said, there is no sufficient material available on record to accept the version of appellant that the joint venture was brought about, either. At least the amount admittedly received by the respondents has to go back to the coffers of appellant, with due interest accruing all these years.

8.3 DW1 examined on behalf of the respondents at para 3 of his deposition affidavit again says as under:

> *"… The plaintiff ordered textile goods from the 2nd defendant and wire transferred @ 125,992.88 on 05.07.1996 and paid the defendant No.2 by cashiers cheque dated 22.04.1997 and another sum of $30,000.00 for the textile goods from the defendants. The plaintiff made the payments as advance payments for the shipment of textile goods to be supplied by the defendant firm and accordingly shipped to the plaintiff".*

At para 4 DW1 claims to have shipped the textile consignment to the appellant-plaintiff. This was stoutly denied in the deposition of PW1. However, absolutely no material is produced by the respondents to prove the

same except mentioning the invoice numbers & the dates. Photostat copies of invoices were marked as Ex.D2 to D5 subject to objection of the appellant vide order dated 24.09.2012. The said invoice copies which the plaintiff alleged as the fabricated ones, have not been duly demonstrated to be genuine by producing necessary material and examining some independent witness associated with the consignment of goods. No efforts were made to liquidate the objections and thereby admit these documents to the record of evidence. Therefore they are liable to be eschewed. The version of the respondents that the payment made by the appellant was towards the goods ordered and that the said goods were supplied, is only a self serving statement. The placement order or its particulars have not been averred or stated in the deposition, despite their denial. In any circumstance, the payment in huge sums admittedly made by the appellant-plaintiff unjustly remains with the defendants. This aspect of the matter has not been duly adverted to by the Court below, and on this count also impugned judgement & decree are unsustainable.

8.4 The version of DW1 examined on behalf of the respondents in the suit in question does not generate confidence because:

(i) DW1 in his cross examination dated 23.03.2014 says: "…*I do not know about the plaintiff having filed reply to the Counterclaim on 06.12.2002 before the USA Court…".* However, even a blind man can see that such a reply was filed by the appellant and the same was part of the record in the Illinois Court.

(ii) The respondents had specifically prayed for and accordingly were granted extension of time until 15.09.2003 as against 15.05.2003 for appearance and deposition in the Illinois Court. However, despite grant of long time they did not participate in the said proceedings, on the ground that VISA was denied. That is not true inasmuch as in his cross examination dated 23.03.2014 DW1 specifically said: "… *It is false to say that I could not visit USA because of the denial of VISA and could not defend my case in USA…".* In his affidavit evidence at para 6 he says: "… *Due to ill health of my father, I could not go to US for deposition…".*

(iii) In Bangalore Suit the respondents had taken up an unconscionable stand that the said Suit was not maintainable and that the appellant's should execute the foreign judgements in question. At the same time, he has

taken up a contention that the said judgements have been obtained by the appellant taking undue advantage of situation and without giving opportunity to meet the claim. Twice the Illinois Court had granted months of time on request of the respondents.

(iv) At para 8 of the Written Statement the respondents have taken up a specific plea: *"…The defendant is unaware of what exactly transpired in the US Court as he was denied VISA to enter the US and properly defend himself..."*. This is apparently false inasmuch as: they had moved for dismissal of complaint in Illinois Court that was eventually rejected; they had got the discovery order altered by moving application; they had filed their Written Statement and subsequently their Counterclaim as well. All this they did by engaging a counsel. They had also got extension of the period for appearing for deposition.

In substance, the above all does impeach the credibility of DW1 although, *falsus in uni falsus omnibus* is not rule in India.

In the above circumstances, this Appeal succeeds in part with costs throughout; the impugned judgment & decree are reversed partly decreeing appellant's Suit in O.S.No.590/2005; the respondents being jointly & severally liable, are directed to repay to the appellant a

sum of USD 1,25,993/- (one lakh twenty five thousand nine hundred & ninety three) plus USD 30,000 (Thirty thousand) in all USD 1,55,993 (One lakh fifty five thousand nine hundred & ninety three) only with interest at the rate of 18% per annum w.e.f. 17.05.1996 for USD 1,25,993/- and w.e.f. 28.04.1997 for USD 30,000.

The above remittance shall be made by the respondents to the appellant within three months in Indian currency with the conversion value as on the date such remittance is made. For the delayed period there shall be an additional interest at the rate of 0.5% per *mensum*. (The rate of interest and default rate of interest are fixed keeping in view the commercial transaction in question).

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(C M JOSHI)
JUDGE

Snb/Bsv/Cbc