

CASE NO.:
Appeal (civil) 504-508 of 2008

PETITIONER:
A. JAYACHANDRA REDDY

RESPONDENT:
DESERT VALLEY MEDICAL INC

DATE OF JUDGMENT: 17/01/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO.504-508 OF 2008
(arising out of SLP(C)No.9763-9767/2005)

Leave granted.

Heard the learned senior counsel for the appellant at length.

In view of the order that we propose to pass it may not be necessary to recite the entire facts leading to the filing of these appeals. Suffice it to say that the respondent-plaintiff filed suit, namely, C.S.No.609/2004 before the High Court of Judicature at Madras under Order VII Rule 11 of the Code of Civil Procedure Code read with Order VI Rule 1 on the Madras High Court Original Side and Section 13 of the Code of Civil Procedure Code. The defendant was put to notice and the appellant(defendant in the suit)herein filed an application under Order VII Rule 11 CPC for dismissal of the suit. The learned Single Judge considered the application and after examining the entire records rendered a lengthy judgment holding that the said suit is hit by Section 13(b),(c),(d) and (e) of the Code of Civil Procedure and accordingly rejected the suit. Aggrieved thereby, the plaintiff filed an appeal before the Division Bench of the High Court. The learned Division

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Bench by the impugned order considered the entire matter again and held that the learned Single Judge decided the matter as if he is sitting as an appellate authority over the order

passed by the foreign court. The Division Bench was also of the view that whether the foreign judgment is conclusive or not is to be decided in the light of the provision contained in Section 13 C.P.C. but that can be done so only at the conclusion of the trial and not at the threshold because a perusal of the plaint and documents filed along with the plaint do not lead to such a conclusion. In the premises aforesaid the Division Bench held that the order passed by the learned Single Judge was not tenable in law and accordingly the same was set aside by the aforesaid order. The Division Bench, therefore, remanded the suit to the learned Single Judge to be decided on merit after the conclusion of the trial.

We are of the view that the view taken by the Division Bench requires no interference.

We clarify that all the contentions are open to the defendant in the suit including the applicability of Section 13 of the Civil Procedure Code.

The appeals are accordingly dismissed. No costs.