IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1399 of 2010

Mansoor Ahmed Mughal ----------Plaintiff.

Versus

ACE Securities & others ----------Defendants.

Dates of hearing: **23.02.2018, 15.03.2018, 11.04.2018**

Date of Judgment **20.06.2018**

Plaintiff: **Through Mr. M.R. Sethi, Advocate.**

Defendant No.3: **Through Mr. Ameen Bandukda, Advocate.**

J U D G M E N T

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration, Recovery/Return of Shares and Damages and was initially filed against Defendants No.1 & 2 and thereafter pursuant to order dated 23.08.2016, Defendant No.3 i.e. Pakistan Stock Exchange was also arrayed. The Plaintiff claims to be engaged in the business of buying and selling of shares on the Stock Exchange, whereas, Defendant No.1 is a Company registered with Defendant No.3 as a Stock Brokerage House, and Defendant No. 2 is the Chief Executive Officer of Defendant No.1. The Plaintiff through this Suit has sought the following relief(s):-

a) To declare that the shares mentioned in the list annexed as Annexure P/1 hereto are the Exclusive Property of the Plaintiff and the Plaintiff being lawful, rightful, bonafide owner is entitled for the above stated shares.

b) To declare that the acts of Defendants for secretly Removing the above stated Plaintiff's owned shares, from Plaintiff's accounts No. 055002 and CDC Account No. 03863-9468 and selling / transferring / disposing those shares without the

knowledge, information, permission and consent of the Plaintiff being unauthorized, illegal, unlawful and without any lawful justification and / or authority are null and void.

c) To declare that sine the 2,781,500 shares of World Call Telecom (WCT) were unlawfully and secretly removed from the above said sub account of the Plaintiff and were unauthorizedly sold out by the Defendants and due to the illegal and unlawful acts of Defendants the deal under which 2,781,500 shares of World Call Telecom were bought for Rs. 48,873,280.57 on 31.07.2008 come to an end and stood revoked / cancelled thereby the Defendants are liable to restore the Credit Balance of Rupees 1,005,860.04 in Plaintiff's account No. 055002 as it was on 31.07.2008.

d) A decree in favour of the Plaintiff and against the Defendants jointly and severely directing therein the Defendants to arrange and / or repurchase the shares which were lying in the Plaintiff's Account No. 055002 and CDC Sub Account No. 03863-9468 and were illegally sold out by Defendants and deliver / return the same in addition to any bonus, right shares, cash dividend or any other profit announced by the companies on those shares as per list attached as Annexure P/I here to the Plaintiff.

OR in the alternative payment of the account equivalent to and calculated at the prevailing market value of the shares (whatever it may be) at that time of final satisfaction and realization of Decree in addition to and apart from all bonuses, right shares, cash dividends or any other profits announced by the companies or so earned on those shares, for the entire period of time form their unlawfully removing / selling till realization, in addition to 14% markup over and above the amount so calculated from the date of the sale of those shares i.e. month of July 2008 till realization.

e) A Decree for a sum of Rs. 10,000,000/- (Rupees Ten Million) for compensation and damages against the Defendants jointly and severally with mark up at the rate of 14% per annum from the date of institution of suit till the payment or realization of the decretal amount.

f) To grant any better relief / relieves, which have not been prayed, and this Honourable Curt deem fit and proper in the circumstances of the case.

g) Cost of the proceedings.

2. The precise facts, as stated, are that Plaintiff started margin trading with Defendants No.1 & 2 in Account No.055002 in the year 2004 and a representative of Defendants No.1 & 2 was acting under the instructions of the Plaintiff to trade in shares. The Plaintiff was issued Universal Identification Number (UIN) and a Sub-Account No.03863-9468, which was opened with Central Depository Company (CDC), wherein, till 31.07.2008, a credit balance of Rs.1,005,860 as well as various shares in the said account were the exclusive property of the Plaintiff except the shares of World Telecom Ltd., which were financed by Defendant No.1. It is further stated that in 2007 at the request of Defendants No.1 & 2, the Plaintiff started trading under their House Account No.090001, which was not a Margin Account, but was an account of Defendant No.1 and all trading in that account were done under the UIN of Defendant No.1 and it was agreed that under this arrangement shares up to Rs.2.5 Million of choice of the Plaintiff could be bought and kept under the said House Account, whereas, for availing such facility, Plaintiff will be charged interest at KIBOR Plus 2.5% per annum. It is further stated that on 01.06.2008, the said account was completely settled. According to the Plaintiff's case on 02.06.2008 Rs.22 Million was paid to Defendants No.1 & 2 from his Account 055002 to the House Account 090001 of Defendant No.1 to purchase 1.5 Million shares of JS Value Fund with directions to transfer 1.4 Million shares in Margin Account of the Plaintiff and 0.1 Million shares to be kept in the House Account of Defendant No.1 till the balance of Rs.1,250,000 in Account No.090001 is settled and it is the case of the Plaintiff that such instructions were never followed and on the contrary the Defendants No.1 & 2 also failed to credit the bonus shares of FCSC

in his account despite instructions. On or about 27.05.2010 it came to the knowledge of the Plaintiff that the said Defendants were secretly selling the shares of the Plaintiff and on this they were immediately approached to stop such illegal act and on 29.05.2010 Plaintiff met with Defendant No.2, who gave assurance that bonus shares of FCSC and JS Value Fund will be credited in Account 055002 and all sold shares will be bought back. The Plaintiff also approached Central Depository Company Ltd (CDC) and obtained his Account Statement, which revealed that the said Defendants had sold out almost all shares of the Plaintiff that were removed from Sub-Account No.9468. It is further stated that another transaction was entered into for purchase of 2,781,500 shares of World Telecom and the Margin Trading Account 055002 of Plaintiff went into debit of Rs.4,88,732,80.57 and on 10.11.2008, the said Defendants secretly and without permission removed the said shares from the Sub Account of Plaintiff, hence the contract under which the said shares were bought stood revoked and cancelled, which fact was duly intimated by the Plaintiff. According to the Plaintiff's case on 28.05.2010 the said Defendants issued Letter claiming it to be a margin call in respect of Account No.090001, which account in fact is the House Account of Defendant No.1 and not of Plaintiff and on the basis of such margin letter, they sold out the Plaintiff's shares, which is an illegal act, thereafter on 15.07.2010 a Legal Notice was served, which remained un-responded, hence instant Suit.

3. Written Statement was filed on behalf of Defendants No.1 & 2, wherein, counter claim was also lodged and while denying the claim of the Plaintiff, the said Defendants lodged their independent

claim against the Plaintiff. The Plaintiff filed its replication and written statement to the said claim, and thereafter vide Order dated 10.11.2016, Eleven (11) Issues were settled and subsequently by consent of parties on 20.12.2016 Issue No.2 was reframed. It is also noteworthy that Plaintiff filed CMA No.6394/2015 for attachment before judgment, and sought some relief against defendant No.3 as well, who by that time was not arrayed as a defendant. Thereafter pursuant to order dated 23.8.2016 passed by this Court, Pakistan Stock Exchange was arrayed as a defendant in this matter. The Issues settled by the Court for the purpose of adjuration are as follows:-

1. Whether the Suit as framed is maintainable against Defendant No. 2?

2. Whether the Plaintiff is entitled for recovery of shares as per list attached with the Plaint, along with right shares, bonuses, dividends, profits accrued thereon and / or at a price on which it was sold / disposed of in the year 2011 and / or at the value prevailing at the time when decree is likely to be passed?

3. Whether there was any short fall in the Account No. 055002 of the Plaintiff requiring a margin Call and that the letter dated 28.05.2010 of the Defendants was legally a Margin Call in terms of KSE Rules, Regulations? And that the Defendants rightfully removed the shares of the Plaintiff from his Account No. 055002 and CDC Sub-account No. 03863-9468 prior to margin Call?

4. Whether the Plaintiff is entitled for compensation and damages of Rs. 10,000,00/- (Ten Million)?

5. Whether the Plaintiff is exclusive owner of the Accounts No. 090001 and 090002? And the Plaintiff entered into a tripartite Repurchase Agreement?

6. Whether the claim in respect of Tripartite Repurchase Agreement is within time limitation?

7. Whether all the shares transacted in Accounts No. 055004, 055012, 090001 and 090002 were deposited by the Defendants in the CDC Sub-Account No. 03863-9468 of the

Plaintiff after change of title? If so, what happened to those shares?

8. Who amongst the Plaintiff or Defendants is entitled for the relief claimed?

9. Whether the Defendant No. 1 was legally permitted to liquidate the securities of the Plaintiff after providing a lawful Margin Call to the same?

10. Whether the Plaintiff is liable to pay Rs. 228,931,404/- along with markup @ 15% p.a. to the Defendant No. 1, as purchase transaction?

11. What should the decree be?"

4. The Plaintiff examined himself and was duly cross-examined also, but the Defendants No.1 & 2 failed to lead any evidence. Learned Counsel for the Plaintiff has contended that insofar as the Plaintiff is concerned it is only Issues No.1,2 & 4, the onus of which is upon the Plaintiff to prove, whereas, Issues No.3,5,6,7,9 & 10 are required to be proved by Defendants No.1 & 2. According to the Learned Counsel insofar as Issue No.1 is concerned, the Plaintiff in his Affidavit-in-evidence has specifically claimed and averred that the liability of all wrongs committed was jointly against Defendants No.1 & 2 and such fact has been proved during cross-examination at various places, and therefore, it is not only Defendant No.1 but so also Defendant No.2, who is also liable in respect of the claim of the Plaintiff. He has contended that the entire Company i.e. Defendant No.1 was operated by Defendant No.2 and it was Defendant No.2, who approached the Plaintiff for doing business with Defendant No.1. According to the learned Counsel as per practice the conversation between a Customer and Stock Broker is recorded as per rules of the Stock Exchange; but despite best efforts of the Plaintiff, the said Defendants failed to

produce any such recording so as to deny the contention of the Plaintiff. He next contended that since the evidence led by the Plaintiff has gone unchallenged and un-rebutted, and has remained un-shattered during cross-examination, therefore, in view of the Judgments reported as **PLD 2011 SC 296** ***(Hafiz Tassaduq Hussain v. Lal Khatoon and others)***, **1991 SCMR 2300** ***(Mst. Nur Jehan Begum through legal Representatives v. Syed Mujtaba Ali Naqvi),*** **1991 MLD 90** ***(Muhammad Ibrahim and 3 others v. Province of Sindh and anther),*** **2006 MLD 1413** ***(Malik Nazar Ahmed v. City District Government, Karachi through District Coordinator Officer and others)***, **2016 YLR 2462** ***(Land Acquisition Collector (M-I) National Highway Authority Islamabad and 4 others),*** **PLD 2013 Sindh 513** ***(Captian Syed Warasat Hussain v. Muhammad Ahad Saad)*** and **PLD 2015 SC 187** ***(Farzand Ali and another v. Khuda Baksh and others)***, whereby, it has been held that whatever is deposed in the Examination-in-Chief and is not subjected to the cross-examination, the same shall be deemed to have been admitted and when witness is not cross-examined on the material brought in evidence, the normal inference would be that the same has been accepted, and therefore, the Issue No.1 may be answered in the affirmative. He has further referred to Exh.P/30, which is a Letter dated 28.05.2010, wherein, the Defendants No.1 & 2 have stated *"please be advised that all our discussions have been done on recorded lines. This history can be reproduced as and when and wherever required"*, which the Defendant has failed to place on record, therefore, it further substantiate the case of the Plaintiff. He finally contended that Defendant No.1 is only a juristic person and under the Rules of the Stock Exchange, the Member Companies are now required to be

either Private Limited or Public Limited Companies, whereas, it is in fact the owner or broker himself, who deals with its clients, and therefore, the liability in such matters is of a joint nature, hence the Suit as well as the claim against Defendant No.2 is very much competent. Coming to issue No.2 learned Counsel has contended that the Plaintiff is owner of shares as per Exh.P/2 and the onus to that effect has been sufficiently discharged in evidence. According to the learned Counsel the evidence led by the Plaintiffs in this context has not been rebutted nor challenged through cross-examination by Defendants No.1 & 2 and in view of the Judgment reported as **PLD 2013 Sindh 513** ***(Captain Syed Warasat Hussain v. Muhammad Ahad Saad)***, the claim of the Plaintiff is proved beyond any shadow of doubt. He has contended that as the denial, if any, by the said Defendants was in the shape of written statement and counter claim but they never appeared in the Witness Box to prove such claim, hence this Issue may also be answered in the affirmative and in favour of the Plaintiff. Learned Counsel has also referred to Para-7 of the written statement of Defendants No.1 & 2, which according to the learned Counsel for the Plaintiff is an admission of the entire Claim in respect of Exh.P/2 and it is only value of the shares which has been disputed, hence in terms of Order 12 Rule 6 CPC no further evidence is required and a Judgment can be passed on the basis of such admission. Learned Counsel has also referred to the cross-examination of the Plaintiff and has contended that various suggestions were made on behalf of the Defendants that the Plaintiff had purportedly given verbal instructions to do all such acts, which were done by the said defendants and this goes on to prove that at least the ownership of the shares mentioned in Exh.

P/2 in the name of the Plaintiff is not denied. Learned Counsel has next contended that to further prove, its bonafide, the Plaintiff moved an application under Order 11 Rule 12 read with order 12 Rule 8 CPC bearing CMA No.1938/2013 requiring the Defendants to produce the documents as mentioned in the application, however, the same were never produced and a plea was taken that they have been lost in rain drain water. He has further contended that thereafter another Application under Order 11 Rule 18 and 19 bearing CMA No.14194/2014 after proper notice to the Defendants was filed but the Defendants No.1 & 2 again failed to reply to the notice nor produced the requirement documents, hence the stance of the Plaintiff has gone uncontested, therefore, as to the shares in question are concerned, the Plaintiff is entitled for the same. He has next contended that the Plaintiff has sufficiently proved that in his margin account 055002 and Sub Account No.03863-9468 till 31.07.2008, the entire Portfolio except the shares of World Telecom were exclusively owned by the Plaintiff and the account was showing a credit balance of RS.1,005,860 and this fact has not been disputed. According to the learned Counsel as per deposition of the Plaintiff on 02.06.2008, the Plaintiff paid Rs.22 Million from his account 055002 to House Account No.090001 for purchasing of 1.5 Million shares of JS Value Funds, which directions to transfer 1.4 Million shares in his margin account No.055002 and 0.1 Milling shares in the House Account No.090001 but such instructions were never followed and transferred in his Margin Account, thereafter, from statement of account obtained from CDC, the manipulation of Defendants surfaced and it transpired that during such period, the Defendants No.1 & 2 kept on removing and selling the shares of the Plaintiff without any lawful authority.

As to the shares of World Call Telecom, the Defendants on 10.11.2008 removed the shares from the Sub-Account and on this basis the entire contract under which shares of World Telecom were bought on finance basis, stood cancelled and for this the Plaintiff has no liability. According to the learned Counsel to counter this, the Defendants No.1 & 2 have come up with the plea that Rs.300 Million was outstanding against the Plaintiff and in order to recover the said amount, the shares of the Plaintiff after written margin call were sold out, however, not a single document including the alleged Tri-Partite Repurchase Agreement (REPO) was placed on record; hence the entire claim of the Defendants No.1 & 2 falls on grounds. He further submitted in Para-10 of the written statement that Defendants No.1 & 2 have claimed that the Securities traded on 27.05.2010 and 28.05.2010 were in normal course of business and after specific instructions of the plaintiff and thereafter margin call was issued and they started selling shares which according to the learned Counsel is a mere statement without any proof, and therefore, cannot be considered by the Court. Per learned Counsel it has come on record that Defendants No.1 & 2 were sending fabricated and false statement of account as against the account being maintained with CDC and all along kept the plaintiff in dark and never provided access to the statement of account being maintained by CDC. This according to the learned Counsel was an illegal act, whereas, they have failed to come forward to lead any substantial evidence in support of their stance; hence this Issue may also be answered in affirmative and in favour of the Plaintiff. In respect of Issue No.4 regarding compensation and damages, learned Counsel has contended that Plaintiff's shares were removed and sold unlawfully depriving the Plaintiff

from dividends, right shares and bonus shares, whereas, the plaintiff has been further burdened with litigation, hence the Plaintiff is entitled for compensation and damages as claimed. Insofar as the remaining issues are concerned, learned Counsel has contended that these issues are required to be proved by Defendants No.1 & 2 and since they have failed to come forward and lead any evidence either to rebut the Plaintiff's assertions or in support of their counter claim, hence all these issues are to be answered against the Defendants and in favour of the Plaintiff.

5. Learned Counsel for Defendant No.3 i.e. Pakistan Stock Exchange has contended that they have only been arrayed pursuant to orders of this Court and to assist the Court, whereas, there is no bias as against the Plaintiff or for that matter Defendants No.1 & 2. Per learned Counsel they were joined as Defendants after six years of institution of the Suit and in the affidavit-in-evidence at page-26, the Plaintiff has clearly stated that Pakistan Stock Exchange was made as a proforma party in the matter, whereas, an attempt has been made during cross-examination to retract from such statement. He has further contended that the terms and conditions of trading as well as margin call are settled between the investor and broker as a matter of contract, whereas, the limit of exposure is also by mutual consent, however, according to the learned Counsel the plaintiff should have arrayed CDC as a party to substantiate its claim as according to Defendant No.3, the Sub Account with CDC is the investor account which is directly operated and all transactions are reported to the investor directly. He has next contended that the Plaintiff kept on trading with Defendant No.1 and should have

been vigilant, whereas, upon default of Defendants No.1 & 2 various claims were received but the Plaintiff never approached and in fact has filed instant Suit. According to the record of Defendant No.1 available with them, there is no claim of the Plaintiff with them, whereas, the plaintiff attempt to seek a Judgment and Decree against Defendant No.3 is misconceived and an afterthought, which is impermissible.

6. While exercising his right of rebuttal, learned Counsel for the Plaintiff has referred to Chapter 6.2.1 and 6.2.2 of CDC Rules and has contended that no information is provided in such matters, whereas, the Defendant No.1 was generating a separate statement of account, which was not based on the transactions recorded with CDC. As to the claim against Defendant No.3, learned Counsel has referred to CMA No.6394/2015, which was an application for attachment before the Judgment and the orders passed thereon on 10.11.2016 and has contended that Defendant No.3 has contested these proceedings and has stepped into shoes of the Defendant No.2, therefore, decree, if any, passed against Defendants No.1 & 2 must be honored by Defendant No.3 as well.

7. I have heard all the learned Counsel and perused the record. My Issue-wise findings are as under:-

ISSUE NO.1	----------	Negative.
ISSUE NO.2	----------	Affirmative.
ISSUE NO.3	----------	Not proved.
ISSUE NO.4	----------	Negative.
ISSUE NO.5	----------	Not proved.
ISSUE NO.6	----------	Not proved.

ISSUE NO.7	----------	Not proved.
ISSUE NO.8	----------	Affirmative in favour of Plaintiff.
ISSUE NO.9	----------	Not proved.
ISSUE NO.10	----------	Not proved.
ISSUE NO.11	----------	As below.

ISSUE NO.1.

8. The Defendant No.2 is the Chief Executive of Defendant No.1 and this issue has come up for the reason that a defence has been taken in the written statement to the effect that Defendant No.2 is neither a necessary nor a proper party to the present Suit. Though admittedly no evidence has been led on behalf of Defendant No.2 to justify such stance, however, the issue is framed in a manner which puts the burden on proving the same on to the Plaintiffs. The stance of the Plaintiff is that while leading his evidence, it has been specially claimed and averred that the liability of Defendant Nos.1 and 2 is of joint nature, whereas, during cross-examination the evidence so led by the Plaintiff has not been shaken. Admittedly, this is a case, wherein, the Plaintiff was acting as an investor in buying and selling the shares and for which in law and rules was required to do so only through an authorized broker duly affiliated and approved by Defendant No.3. It is not a matter of dispute that Defendant No.1 was a member of the Pakistan Stock Exchange being a Limited liability Company, whereas, Defendant No.2 is the Chief Executive/Director of Defendant No.1. It is settled law that in claims against a private or a Public Limited Company, the liability of its directors is always only to the extent of their shareholding and in no manner they could be held liable for the

entire claim against such Company. At the most the Director can be held liable for damages, if he makes a fraudulent or negligent misrepresentation in the course of negotiating a contract or business venture between the company and a third party. There are other exceptional situations as well in respect of criminal liability of a Director of a company, but for the present purposes as it is only a Civil Suit for recovery of shares / money. The Director in question was acting on behalf of the Company who was only authorized to enter into trading at the Stock Exchange being a Registered Stock Brokerage Member. It is also a matter of record that in fact plaintiffs own case is that he was dealing in buying and selling shares through one of the employees of the Company namely. In this matter the plaintiff had to prove beyond doubt that whatever action was taken by the Director i.e. Defendant No.2 had in fact harmed his individual interest and was a result of negligence on the part of Defendant No.2. This according to me is lacking. If that would have been the case, then it was a direct damage caused by Defendant No.2, but as observed this is not proved. After all the plaintiff was dealing with the company, and it is a matter of record, that lately all Stock Brokers are by law required to operate only through a Company and no individual membership is any more in field. If you intend to invest and trade on the Stock Exchange, you are dealing with the Company and not with an individual anymore, like in the past. Therefore, in the given facts of this case I am of the view that issue in consideration must be answered in negative by holding that the claim against Defendant No.2 in this Suit is only maintainable to the extent of his shareholding in Defendant No.1.

ISSUE NO.2.

9. This is the primary Issue of the Plaintiff in respect of the claim in this Suit. The Plaintiff through this Suit has claimed that his shares mentioned in Exh.P/2 are his exclusive property, whereas, these shares have been unlawfully sold out by Defendant No.1, and therefore, he is entitled for recovery of all such shares along with benefits accrued thereon including the right shares, bonuses, dividends, profits accrued thereon with a further relief in the alterative, the price on which they were sold/disposed of in the year 2011 and/or at the value prevailing at the time when the decree is likely to be passed. The Plaintiff has entered into the witness box in support of his claim and has been extensively cross-examined by the Counsel for the Defendants No.1 & 2. Again the said Defendants have failed to lead any evidence in support of their claim. The Plaintiff has asserted in his Plaint as well as in the Affidavit-in-Evidence that shares as per Exh.P/2 were owned by him and have been sold out unlawfully. In response to Para-7, wherein, this allegation was leveled that the Defendants are secretly selling the above stated shares, in written statement it has been responded as follows:-

> "7. That contents of Para 7 are denied as being false and misleading. **The Defendant No. 1 only started selling the shares of the Plaintiff, after the written margin call was provided to the same, which thereafter allowed complete discretion to the broker (Defendant No. 1) to sell the securities without notice, for the recovery of payments made against underlying market purchase transactions, made by the Defendant No. 1 on behalf of the Plaintiff, and to pay for deficit in the pre-agreed margin requirement**. Furthermore, the directions given by the Plaintiff were futile, as no actual payment in furtherance of the said directions was made by the same. The outstanding balance in the trading account(s) of the Plaintiff, at the time of the written margin call, was Rs. 300 Million including liquidated damages and other outstanding costs. The value of the shares in the said account,

> according to the prevalent market prices, was only Rs.76 Million, and hence a shortfall of Rs.224 Million. Therefore, the allegations made in Para 7 of the Plaint are totally baseless and malafide."

Reliance on this Para has been placed for the reason that before the Court it is only the cross-examination conducted on behalf of the Defendants No.1 & 2 to examine their stance as they have failed to lead further evidence and when this reply is read with *juxtaposition* to the said cross-examination, it appears to be a matter of fact that there were shares of the Plaintiff available with Defendant No.1 as it has been clearly stated in the aforesaid Para that ***"The Defendant No. 1 only started selling the shares of the Plaintiff, after the written margin call was provided to the same, which thereafter allowed complete discretion to the broker (Defendant No. 1) to sell the securities without notice"***. It further reflects from the above contention of Defendants No.1 & 2 that at least shares were available with them in the account of the Plaintiff, and it is only the value of the shares, and so also their claim against the Plaintiff, which has been disputed by them. As to the quantum of these shares is concerned, there appears to be an implied admission or otherwise there would have been a specific denial to the exact quantity of shares of various companies. The main stance of Defendants No.1 & 2 while conducting the cross-examination has been that the shares were sold out due to shortfall in the minimum limit in the Plaintiff's Account and after issuance of a margin call. Whether there was any shortfall or a valid margin call was issued, both these Defendants have failed to lead any evidence, and therefore this stance cannot be substantiated. The Plaintiff during cross-examination has replied to various questions suggested on behalf of the said Defendants

and its' overall perusal does reflect that there was a relationship between the parties, whereas, even questions have been suggested in respect of shares of different Companies as well as the various Account Numbers in dispute. These many questions and so also suggestions to the effect that Plaintiff was giving oral instructions for buying and selling shares clearly depicts that at least the Plaintiff was an investor of shares with Defendant No.1 and was maintaining certain portfolio. Since the Defendants No.1 & 2 have not come up to lead evidence, this Court is not in a position to easily discard the contention of the Plaintiff in this regard. It has come on record that Plaintiff had shares in his name lying in control and custody of the Defendants No.1 & 2, and therefore, on the same analogy the Plaintiff will also be entitled for all benefits accrued to the owner of such shares, which may include right shares, bonus shares, dividends, profits etc. In view if such facts and discussion, I am of the view that the Plaintiff has proved his claim of ownership of shares to the extent of Ex.P/2. The question that as to how and in what manner he has to be compensated will be dealt with while answering Issue No.11. Issue answered accordingly.

ISSUE NO.4.

10. Though the Plaintiff is claiming compensation and damages of Rs.10 Million and it has been argued on his behalf that the act and conduct of Defendants No.1 & 2, whereby, his shares were sold out without authority, has resulted in causing damages, hence this prayer. However, in the entire evidence, the Plaintiff has failed to prove such quantum of damages and a mere statement to that effect would not suffice. It is settled law that for claiming

general or special damages, the same are to be proved with cogent evidence. Mere causing of alleged losses does not entitle a party to damages as well. This has to be proved independent and without recourse to the main prayer. The evidence led on behalf of the Plaintiff does not corroborate the claim as to damages being demanded. Accordingly, this Issue is answered in negative.

ISSUE NO.8

11. In view of the fact that Defendants No.1 & 2, who had filed their counter claims, have failed to lead evidence, therefore, entitlement for relief, if any, is of the Plaintiff and not of the Defendant. Issue answered accordingly.

ISSUES NO.3,5,6,7,9 & 10.

12. All these issues arise out of written statement and counter claim of Defendants No.1 & 2 and admittedly they have failed to come forward before this Court to lead any evidence, therefore, this Court is not in a position to respond and to adjudicate these issues. Accordingly, all these Issues are not proved.

13. Before coming to the final issue No.11 as to what should the decree be, I would like to address the argument of learned Counsel for the plaintiff for seeking relief against Defendant No.3 in view of order dated 10.11.2016. Firstly it may be observed that no issue has been settled to the effect that whether in the given facts Defendant No.3 is liable in this matter or not. Much stress was laid on the order dated 10.11.2016, whereby, CMA 6394/2015 for attachment before judgment was disposed of. In that order, the observation was only to the effect that once the claim is

established and a decree is obtained by the plaintiff, the same shall be considered by Defendant No.3, in terms of the prevailing law and regulations and the amount deemed to be outstanding and payable under the law shall be paid to the plaintiff. This is only an observation as to the mode in which the decree, if any, may be executed. Secondly, it has been made on the assumption that in like cases, when the Brokers are in default the Stock Exchange, in order to protect the interest of the investors, normally, take over the assets of the Brokers, i.e. the Membership Card and the office. Therefore, while disposing of the said application, such observation has been recorded. Nonetheless it is for the Executing Court to see and decide, but the for present purposes, in this Suit, no decree can be passed against Defendant No.3, pursuant to order dated 10.11.2016 as contended on behalf of the plaintiff.

ISSUE NO.11.

14. The plaintiff in the prayer clause seeks a decree against the Defendants No.1 & 2 to arrange and/or repurchase the shares lying in the Plaintiff's Account along with and in addition to any bonus, right shares, cash dividends or any other profits or in the alternative payments of the amount equivalent to and calculated at the prevailing market value of the shares at the time of satisfaction and realization of decree in addition to and part from all bonuses, right shares, cash dividends and/or any other profits in addition to 14% markup over and above the amount so calculated from the date of sale of those shares in July, 2008 till realization. The prayer so made by the plaintiff is not clear and specific but is vague and cannot be quantified in simple manner. The Shares in question have been sold admittedly and on the one hand, the

Plaintiff has demanded the same shares and in the alternative the value of these shares at the time of satisfaction of the decree. This perhaps is not correct, therefore, in my view since Issue No.2 has been answered in the affirmative in favour of the Plaintiff, therefore, the Suit is decreed against Defendant No.1 & 2 (in respect of Defendant No.2 only to the extent of his shareholding in Defendant No.1) to the extent that Plaintiff is entitled for his shares as per Ex.P/2 along with bonuses, right shares, cash dividends and or any other profits; and in the alternative for the value of shares on which they have been sold again along with bonuses, right shares, cash dividends and or any other profits, with markup at the rate of 6% from the date of filing of this Suit i.e. 06.09.2010 till its realization. Insofar as Defendant No.3 is concerned the Suit stands dismissed against this Defendant.

15. Suit stands decreed in the above terms.

Dated: 20.06.2018

J U D G E

Ayaz