

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment Reserved on: 21.1.2010*  
% *Judgment Delivered on: 29.1.2010*

+ **CS(OS) No.1278/1995 & C.C.No.2184/1998**

SHRI HARI OM MAHESHWARI

.....Plaintiff

Through: Plaintiff in person.

Versus

SHRI SANJAY KUMAR JALAN & ANR.

.....Defendants

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**INDERMEET KAUR, J.**

1. Present suit has been filed by the plaintiff who is stated to be a member of Delhi Stock Exchange Association Ltd. i.e. defendant No.2. His membership number is D-273 and he is carrying on business of shares and stocks brokers under the name and style of M/s H. Maheshwari & Co. since 24.4.1990.

2. Defendant No.1 is also a member of the defendant No.2. His membership code is D-239 and is carrying on business of shares

and stock brokers under the name and style of M/s B.K.Jalan & Co. which was subsequently taken over by M/s BKJ Securities Ltd. under the same membership code.

3. Defendant No.2 is a public limited company and is a recognized stock exchange under the provisions of the Security Contract (Regulations ) Act, 1956 ( hereinafter referred to as “the said Act”). This company has been incorporated to facilitate the business of the stock exchange and provides to its members facility of a trading hall, clearing house, settlement of members’ disputes. It is guided by its Articles, Rules, Regulations, Bye-laws as approved by the Central Government under the provisions of the said Act. These provisions are applicable and binding on all members of the defendant No.2.

4. That under Section 14 of the said Act any contract in shares and securities in contravention of the bye-laws as specified under Clause(a) of sub-Section 3 of Section 9 shall be void. The procedure adopted for share transaction pursuant to the Articles, Rules, Regulations, and Bye-laws of the Stock Exchange have been detailed.

(a) It is stated that defendant No.2 issues to its members two books namely the daily transaction book known as a chopri and the errors corrections book. The pages of the chopri are numbered and bear the stamp of the executive director of the defendant no.2. The transaction done in the

trading hall of defendant No.2 are recorded by the members in the chopri at the end of every trading session and a leaf of the said chopri containing the day's transaction is submitted to defendant No.2 on the very same day. Only the transactions entered in the chopri constitute a contract between the members of the defendant No.2.

(b) The errors correction book is used to correct a transaction which is already reported to the defendant No.2 during a settlement period through the chopri but for some reason, the transaction has not matched in the in the records of the defendant No.2. Unlike the chopri, the pages of the errors correction book do not bear the stamp of the executive director nor the pages of this book were numbered.

(c) On the basis of the transaction reported by the various members through the daily transactions list, defendant no.2 prepares two sets of list, namely:-

(i) Match list comprising of transactions reported by both the parties to the transactions and matched.

(ii) Error list comprising of the transactions reported by the members but where there is a discrepancy either in the name or code of the

members or the shares or there is a variation in quantity or rates etc.

The members are required to get the errors corrected. Thereafter, a final match list of all the transactions for a particular settlement is prepared and circulated amongst the members by defendant No.2.

(d) At the end of each settlement, defendant No.2 fixes rates for every share on the basis of the rates prevailing at the end of the trading session. Delivery of the shares between the members takes place at the rates so fixed by defendant No.2. Amount of difference due to or due by a member is worked out by defendant No.2 for each settlement. Payment of the difference list takes place through clearing house of defendant No.2, at the scheduled date.

(e) In respect of the transactions between the members of defendant No.2, no contract note is required to be issued nor any member raises difference bills between themselves because all transactions are compulsorily routed through defendant No.2 who enforces the performance of the contracts entered into by its members.

(f) In order to facilitate the payments, members are required to open a current account with the Bank designated by defendant No.2 and the members are required to maintain sufficient funds in the account so that the amounts due by

them in a particular settlement can be debited through the clearing house. In case a member fails to arrange the funds, defendant No.2 gets the membership card of the defaulting member auctioned to recover the dues.

(g) Disputes between the members in respect of the transactions entered in the trading hall of defendant No.2 are settled through the Committees formed by the Board of Directors of defendant No.2. Under Article 127 of the Articles of Association as well as Rule 281 of the Bye-laws of defendant No.2, settlement of disputes between the members and defendant No.2 is done through the process of Arbitration; members are specifically debarred from commencing any legal proceedings against another in terms of Rule 282 of the Bye-laws without the permission of the Board of Directors of defendant No.2.

5. That on or about 15.5.1992 defendant No.2 provided a payment difference list for settlement for the period w.e.f. 7.4.1992 to 08.5.1992. A sum of Rs.14,66,350/- was shown payable by the plaintiff to defendant No.1 of which Rs.14,40,500/- was on account of the difference in the alleged purchase of 3000 share of Bindal Agro and 35000 of Oswal Agro by the plaintiff from the defendant No.1.

6. The amount of Rs.14,40,500/- was worked out as follows :-

| Name of Share | Quantity | Purchase Amount | Delivery Rate | Difference Price               |
|---------------|----------|-----------------|---------------|--------------------------------|
| -----         | -----    | -----           | ----          | -----                          |
| Bindal Agro   | 3,000    | 75.00           | 54.50         | 61,500.00                      |
| Oswal Agro    | 35,000   | 126.40          | 87.00         | 13,79,000.00                   |
|               |          |                 | Total         | -----<br>14,40,500.00<br>----- |

7. It is stated that this purchase was neither recorded on the chopri of the plaintiff nor any such purchase was reported to defendant No.2 through the daily transaction list during the said settlement period or in the previous settlement period.
8. In the consolidated match list for the settlement ending on 8.5.1992 the date of purchase of 3,000 shares of Bindal Agro has been shown as on 7.5.1992; purchase of 35,000 shares of Oswal Agro is not appearing in the consolidated match list of transaction for settlement ending on 08.5.1992. However, in the final list of transactions for the said settlement, the transaction of 35,000 shares of Oswal Agro is recorded.
9. It is stated that since there was no transaction of the purchase of 35,000 shares of Oswal Agro and 3,000 shares of Bindal Agro by the plaintiff from defendant No.1 nor any such transaction was reported through the daily transaction list; recording of this transaction by defendant No.2 is violative of the rules, regulations and bye-laws of defendant No.2 and fraudulent in nature.

10. That this was brought to the notice of the executive director of defendant No.2 but they denied the liability. In spite of efforts defendant No.1 could not be contacted. Plaintiff to save his membership card and to protect his solvency was left with no option but to make the payment shown in the difference payment list for the settlement ending on 08.5.1992.

11. It is stated that on 07.5.1992 when this transaction was recorded the rate of the share of Bindal Agro was Rs.57 as against the rate of Rs.75 shown as the rate on which plaintiff had purchased the shares from the defendant No.1; on 08.5.1992 when the transaction of 35,000 shares of Oswal Agro were recorded the prevailing rate was Rs.87 as against the rate of Rs.126.40 as shown to be the purchase price by the plaintiff from defendant No.1.

12. Plaintiff to square off the purchase of the aforestated shares was forced to sell them in the market and bear the difference between the alleged purchase price and the sale price because otherwise the plaintiff would have to take delivery of these shares by making payment of Rs.47 lacs which was not within the means of the plaintiff. Plaintiff sold 3,000 shares of Bindal Agro and 35,000 shares of Oswal Agro in different lots and at different rates which averaged at Rs.42 in the case of Bindal Agro and Rs.60 in the case of Oswal Agro and thus incurred a loss of Rs.24.23 lacs.

13. On 16.10.1992, defendant No.1 had lodged claim against the plaintiff for non-payment of Rs.1,75,950/- the settlement period mentioned in this claim was 16.4.1992 to 26.4.1992; 26.4.1992 being a public holiday; this discrepancy itself reflects on the fraud played by defendant No.2 against the plaintiff.

14. On 2.11.1992 a committee of defendant No.2 approved the claim of defendant No.1; this was again a fraud played upon the plaintiff; plaintiff referred the matter to defendant No.2 vide letter dated 12.1.1993 and raised a claim of Rs.27.70 lacs against defendant No.1; Rs.25.95 lacs as detailed supra and an amount of Rs.1,75,950/- which was the fraudulent claim made by defendant No.1 against the plaintiff. In spite of repeated reminders dated 4.3.1993, 15.4.1993 and 18.5.1993 no action was taken by defendant No.2.

15. On 9.11.1993, an executive director of defendant No. 2 informed the plaintiff that he has been granted approval to approach the authority in law to recover his dues from defendant No.1. This was in violation of Article 127 of the articles of association and bye-law 281 of defendant No.2. The plaintiff vide communication dated 17.11.1993 and letter dated 1.5.1995 made representations to defendant No.2 to re-consider the matter but of no avail.

16. It is stated that defendant No.2 in yet another instance of bestowing undue favour to defendant No.1 directed the plaintiff to

pay to defendant no.1 a sum of Rs.2,72,250/- along with interest @ 18% per annum which was a time barred claim of defendant No.1. Plaintiff disputed this claim. His entry was banned in the trading hall in an illegal manner. Plaintiff filed Suit No.370/93 and Suit No.543/93 against defendant No.2 which matter is pending in a revision petition.

17. Plaintiff has been defrauded by defendant No.1 in the sum of Rs.25,95,450/-. A sum of Rs.14,40,500/- was received by defendant No.1 through defendant No.2 when there was no transaction of the alleged 3,000 shares of Bindal Agro and 35,000 shares of Oswal Agro. A loss of Rs.9,82,500 had been suffered by the plaintiff in squaring off the aforestated purchases; a sum of Rs.1,72,450/- has also been claimed which was a fraudulent claim set up by defendant No.1 against the plaintiff. Plaintiff is also entitled to interest @ 18% per annum on the aforestated amount of Rs.25,95,450/-; the interest worked out is of Rs.12,45,816/-. Decree for a sum of Rs.38,31,266/- has been prayed for. A decree of mandatory injunction has also been prayed for against the defendant No.2 directing the defendant No.2 to exercise its lien on the membership card bearing No.D-239 in the name of M/s BKJ Securities who had taken over the assets of the firm owned by defendant No.1.

18. In the context of the last prayer made by the plaintiff i.e. the prayer for the mandatory injunction against defendant No.2, it is

pointed out by the plaintiff that he is no longer pressing his prayer. An application i.e. I.A. No.10283/1999 had been filed under Order 39 Rule 1 & 2 & Order 38 Rule 5 CPC seeking this prayer, which had been rejected vide order dated 5.2.2003. That order has since attained finality. Plaintiff in view thereof is no longer pressing this alternate prayer.

19. Written statement and counter claim has been filed by defendant No.1. A preliminary objection has been taken that the plaintiff is no longer a member of the Delhi Stock Exchange. It is stated that the membership held by defendant No.1 of the Delhi Stock Exchange has since been sold to M/s BKJ Securities Limited and the said membership code of defendant No.1 D-239 stand transferred to M/s BKJ Securities Limited.

20. On merits, it is stated that the procedure adopted by the Delhi Stock Exchange is not a correct narration; rules, regulations and bye-laws of defendant No.2 be looked into for the said purpose.

21. It is denied that a transaction entered in the chopri alone constitutes a contract; for instance, one member has reported the transaction to defendant No.2 and has entered it in his chopri but the other member accidentally, deliberately, bonafidely or malafidely or for any other ulterior purpose does not enter the transaction in his own chopri at the relevant date; last transaction between the two members would be duly recognized by the Delhi Stock

Exchange as a contractual transaction between those members provided that such a transaction has been matched by both the members to the said transaction before the settlement date relating to any particular period.

22. It is stated that if one member had not recorded the transaction in his chopri and correspondingly other member had recorded the same transaction in his own chopri then such type of transaction can be rectified by defendant No.2 through the error correction list, in case such a transaction is matched by both the members before the settlement date concerning the relevant close settlement period. Such a transaction which is rectified through the error correction list is not a fresh transaction. The final match list prepared and circulated by defendant No.2 is finalized only after the process of matching of transactions and the rectification of the errors is over. If after the final match list there are still some claims and counter claims among the members, the matter can be resolved through the process of arbitration of defendant No.2.

23. It is submitted that the transaction relating to the 3,000 shares of Bindal Agro, 35,000 shares of Oswal Agro and 9,00 shares of M/s J.P.Industries had taken place between the plaintiff and defendant No.1 on 6.5.1992 whereby the defendant No.1 had sold all these shares to the plaintiff. All these three transactions between the plaintiff and the defendant No.1 were reported by

defendant No.1 on the same day when the transaction took place by the submission of the leaf of his chopri completed on the same day on the floor of the house of defendant No.2. Plaintiff with a dishonest intention did not report these transactions in this manner in his chopri. The transaction pertaining to 3,000 shares of Bindal Agro, 9,00 shares of M/s J.P.Industries were matched by plaintiff in the error correction list on the very next date i.e. on 7.5.1992. The transaction of 35,000 shares of Oswal Agro was matched on the next working day i.e. on 07.5.1992; plaintiff on that day deliberately showed the purchase of 3,500 shares of Oswal Agro instead of indicating the number to be 35,000 shares of Oswal Agro; result was that even on the next working day i.e. on 8.5.1992 the said transaction was shown in the error list; on the next working day, plaintiff reported the correction of the said error from 3,500 to 35,000 shares of Oswal Agro to defendant No.2 and he got the said transaction matched through the regular error correction list in accordance with the regulations and bye-laws of defendant No.2 before the date of settlement of account i.e. for the settlement period 27.4.1992 to 08.5.1992.

24. It is stated that on 06.5.1992, plaintiff had conducted the transaction of the sale and purchase of 3000 shares of Bindal Agro @ Rs.75 per share, 35,000 shares of Oswal Agro @ Rs.126.40 per share and 9,00 shares of M/s J.P.Industries @ Rs.241.50 per share. All the aforestated transactions between the plaintiff and

defendant No.1 had been shown by defendant No.1 in his chopri of 06.5.1992. However, since the plaintiff had not reported all these transaction to defendant No.2 in his chopri, these transactions were shown in the error correction list issued by defendant No.2 on the next working day. The plaintiff came out with his error correction report to defendant No.2 and through the said error correction report the plaintiff reported to defendant No.2 about the correctness of the transaction which had taken place between the plaintiff and defendant No.1 with regard to 3,000 shares of Bindal Agro @ Rs.75 per share and the second transaction of 9,00 shares of M/s J.P.Industries @ Rs.241.50 per share. The error correction report regarding transaction of 35,000 shares of Oswal Agro were deliberately not recorded by the plaintiff and were in fact recorded as a transaction of 3,500 shares of @ Rs.126.40 per share. Net result was, out of these three transactions, the one transaction of Oswal Agro again appeared in the error correction list issued by defendant No.2; thereafter plaintiff came out with the correct reporting of the transaction to be of 35,000 of Oswal Agro shares @ 126.40 per share.

25. Ultimately all the three transactions between the plaintiff and the defendant No.1 had been duly matched before defendant No.2 relating to this aforestated settlement period of 27.4.1992 to 8.5.1992 before the settlement date of 15.5.1992.

26. It is stated that a transaction which is not reported by the members to defendant No.2 cannot be recorded by defendant No.2 in spite of the fact that the matching has been done by the corresponding members. The final statement of account with the final match list is drawn up by defendant No.2 and the final delivery payment statement is also prepared by defendant No.2 after the errors and corrections are rectified by the concerned members before the actual date of settlement of account from the previous settlement period.

27. The contention of the plaintiff that executive director of defendant No.2 did not listen to the plaintiff is incorrect; plaintiff even as per his own showing had knowledge about the matching of the transaction in question and the amount paid to defendant No.1 by middle of May 1992, yet he slept over the matter of so called fraud for a period of about seven months when all of a sudden, through his alleged claim for Rs.27,70,000/- against defendant No.1 he made a representation to Delhi Stock Exchange through his communication dated 12.1.1993. This was a calculated move to cause harm and wrongful loss to defendant No.1; this claim is even otherwise barred by estoppel.

28. It is submitted that at the relevant time the plaintiff had an obligation to make payment of Rs.14,66,350/- which was due from the plaintiff to defendant No.1 for the settlement period ending on 8.5.1992. Defendant was bound to discharge this liability. It is

stated that although the rates of opening and closing of transaction at the floor of defendant No.2 may be different the rates at which the transaction had actually taken place between the members during the course of the day; no hard and fast rules of calculation of difference of the value of a particular day is applicable; this is because of the fluctuating situation of the rates between the settlement period and settlement dates as fixed by defendant No.2. There is no question of any fraud having been played by the defendants upon the plaintiff. It is stated that the plaintiff is a chronic litigant and has filed several cases against the defendant No.2; the imaginary loss set up by the plaintiff as per his own calculation is wrong and denied.

29. So far as the raising of difference bills by defendant No.1 on the plaintiff, payment of one bill for Rs.1,72,450/- had been made but payment in respect of difference bills for Rs.1,75,950/- has not been made by the plaintiff to defendant No.1. Plaintiff has sold his membership ticket to some other person without settling the claim of defendant No.1 which claim is alive and subsisting against the plaintiff. The plaintiff has no legal right to ask for a refund of payment of Rs.1,72,450/- made by him to defendant No.1.

30. In the counter claim, it has been submitted that there are three payments due from the plaintiff i.e. a sum of Rs.2,72,250/-, Rs.1,75,950/- and an amount of Rs.15,122.50 as also interest accruing thereon.

31. A sum of Rs.2,72,250/- was collected by the plaintiff from the defendant No.2 and is duly reflected in the payment of adjustment list issued by defendant No.2 on 06.4.1992. Thereafter the plaintiff took the same payment from defendant by means of cheque No.371123, cleared by the bankers of M/s B.K.Jalan & Co. on 20.9.1992 for which a claim has been lodged against the plaintiff by defendant no.1 with defendant No.2.

32. The difference bill in the sum of Rs.1,75,950/- dated 27.4.1992 had been lodged by defendant no.1 with defendant No.2 against the plaintiff which matter is also pending.

33. The third amount of Rs.15,122,50/- is payable by the plaintiff on account of the return of the 50 shares of SIE Ltd. which was returned to the plaintiff as bad delivery through defendant's bill no.5839 dated 29.10.1992. A total sum of Rs.4,63,322.50 is payable by the plaintiff to the defendant besides interest @ 18% per annum calculated at Rs.5,31,000/- is also payable totaling a sum of Rs.9,94,322.50.

34. Replication to the written statement and written statement to the said counter claim has been filed by the plaintiff reiterating and averments made in his plaint while refuting the submission made by the defendant in the counter claim.

35. On 31.7.1998, the application filed by defendant No.1 under Section 34 of the Arbitration Act 1940 seeking a stay of the present suit proceedings was dismissed. Stand of the plaintiff was that

since both the plaintiff and defendant No. 1 have ceased to be members of Defendant No. 2, no recourse can be taken to arbitration.

36. On 29.7.2002, the following issues were framed :-

1. Whether the suit is barred by limitation? OPD
2. Whether the plaintiff is entitled to interest, if so, at what rate and what amount ?OPP
3. Whether the plaintiff is entitled to a decree of mandatory injunctions against defendant No.2.? OPP
4. Whether the counter claim of defendant No.1 is within limitation? OPD
5. If the Issue No.4 is answered in affirmative, whether the defendant No.1 is entitled to recover the amount of counter claim from the plaintiff? OPD
6. Whether the defendant No.1 is entitled to any interest, if so, at what rate and what amount ? OPD
7. Relief.

37. On 5.2.2003, on the application filed by the plaintiff under Order 39 Rule 1 & 2 CPC and Order 38 Rule 5 CPC seeking attachment before judgment against defendant No.1 and the alternate prayer against defendant No.2 not to allow any change in the constitution of its membership was dismissed. In view thereof counsel for the plaintiff has conceded that issue No.3 no longer

survives and he is not pressing his prayer for a decree of mandatory injunction against the defendant No.2.

38. Matter was listed for evidence, the plaintiff has examined two witnesses namely the plaintiff Hari Om Maheshwari as PW-1 and Mr. Vinod Kumar Dua as PW-2. The defendants in spite of opportunity did not lead any evidence. Evidence of defendant No.1 stood closed on 13.1.2009. Evidence of defendant No.2 was also closed on the same day and a statement was made on his behalf that he does not wish to lead any evidence in the case.

39. Arguments have been heard on behalf of the plaintiff; none has appeared to assist this Court on behalf of the defendants. The issue-wise findings are as follow:

40. ISSUE NO.1

The onus to discharge this issue was on the defendants. No evidence has been led by the defendants on this score. No argument has also been addressed. Under Section 3 of the Limitation Act, 1963 there is a mandate upon the Court to dismiss any suit which is barred by the law of limitation even though it has not been set up as a defence. Onus is thus cast upon the Court to examine this issue. The cause of action in the instant case has arisen upon the transactions purported to have been made between the plaintiff and the defendant No.1 relating to the purchase of 3,000 shares of Bindal Agro, 35,000 shares of Oswal Agro for a settlement ending on 08.5.1992. On 15.5.1992, the

defendant No.2 had supplied the statement of account to the plaintiff for the settlement ending on 08.5.1992.

41. Under Article 14 of the First Schedule of the Limitation Act 1963 for a transaction relating to delivery of goods, the period of three years has to be computed from the date of the delivery of the said goods. Shares come within the definition of "goods" as defined in Section 2(7) of the Sale of Goods Act, 1930 and as held by the Court in *Madho Lal Vs. Official Assignee of Bombay* AIR (37) 1950 FC 21.

42. In the instant case the statement of account had been delivered to the plaintiff on 15.5.1992 for the settlement period ending on 8.5.1992. Suit filed on 8.5.1995 is within limitation.

43. Issue No.1 is decided in favour of the plaintiff and against the defendants.

44. ISSUE NO.4

No evidence has been led by the defendant No.1 on this score. His counter claim is based on three transactions i.e. a transaction of Rs.2,72,250/- against a bill dated 4.4.1992. The claim of Rs.1,75,950/- was the amount claimed on a difference bill dated 27.4.1992. The amount of Rs.15,122.50 was raised on a bill dated 29.10.1992. The counter claim of the defendant has been filed on 28.9.1998. Recovery of the aforesaid amount is clearly beyond the period of three years as stipulated under Article 14 of the Limitation Act. Counter claim is ex-facie barred by limitation.

Issue No.4 is decided against defendant No.1 and in favour of the plaintiff.

45. ISSUE Nos.5 & 6

Both these issues relate to the recovery of amounts based on the counter claim of defendant No.1 from the plaintiff. This Court has already held that the counter claim of the defendant No.1 is barred by limitation. No evidence has also been led by the said defendant on the merits of his claim. Both these issues are decided against defendant No.1 and in favour of the plaintiff.

46. ISSUE NO.2

No specific issue has been framed on the principal amount sought to be claimed by the plaintiff. This issue is related to the issue of interest, however, this appears to be a technical omission for which the plaintiff should not suffer and prejudice his claim for the principal amount.

47. The plaintiff has produced two witnesses in his evidence. He has himself entered the witness box as PW-1 and has reiterated all the averments made in the plaint which for the sake of brevity are not being repeated herein.

48. In his cross-examination PW-1 has admitted that he has filed several suits against Delhi Stock Exchange of which three suits have been dismissed as withdrawn and one is still pending. He has exhibited the chopris from his record as Ex.P-1/1 to Ex.P-1/5. A chopri as detailed is a leaflet which is given to each member of

defendant No.2 i.e. the Delhi Stock Exchange and the transactions made by the member on any particular day are entered in their respective chopri; one copy of which is handed over to defendant No.2. The chopris of the transacting members are matched by defendant No.2 and thereafter a match list is prepared; however, if there are any errors the same are rectified pursuant to the submission made to defendant No.2 by the said respective members as per the error correction list and thereafter a final match list is prepared by defendant No.2.

49. Ex.P-1/2 to Ex.P-1/5 are the chopris of the plaintiff. The case of the plaintiff is that as per his chopri there was no transaction entered into with defendant No.1 by the plaintiff on 06.5.1992; that is why his chopris are silent on the recording of any such transaction. The corresponding chopris of defendant No.1 have been proved in the testimony of PW-1 as Ex.D-1/1. The transactions of 06.5.1992 show that 3,000 share @ Rs.75 per share have been entered in the chopri of defendant No.1 as having been sold to the plaintiff; another transaction of 9,00 shares of M/s J. P. Industries @ Rs.241.50 per share has been shown to have been transacted by defendant No.1 in favour of plaintiff as also a third entry of 35,000 shares of Oswal Agro @ Rs.126.40 per share has been shown to have been transacted by defendant No.1 in favour of the plaintiff. This document has been admitted by the plaintiff himself in his testimony. It is not a disputed document.

50. In his cross-examination, PW-1 has admitted that the bargains are entered in the chopri and the said chopri contains two leafs; one of which is submitted to the Delhi Stock Exchange and one is retained by the party. He has further admitted that Ex.P-1/3 is his chopri which does not contain his signature; if there is any wrong entry, it is corrected by recording the same in the error book which is another book provided by defendant no.2. He has admitted that he has not placed on record the copy of his error correction book, although the error correction book is maintained by him. He has further stated that all bargains are made as per the bargaining procedure provided under the bye-laws of defendant No.2.

51. PW-2 Vinod Kumar Dua is also a member of the Delhi Stock Exchange.

52. In his cross-examination, he has stated that Chopri is a book which is issued by defendant No.2 to its all trading members and bargains are recorded in this book which is a daily transaction book; if 'Sauda' is matched by two brokers then there is no need to make any entries in the error correction book. After the errors are corrected in the error correction book the bargain becomes a contract between the parties.

53. From this evidence which has come on record, it is clear that both the plaintiff and the defendant No.1 were required to make their respective entries in their chopris; one leaflet of this chopri

had to be submitted by the plaintiff and defendant No.1 to defendant No.2. In case there was any error the same has to be pointed out by the respective person to defendant No.2 after making entries in the error correction book. Thereafter, a final match list is prepared by defendant No.2.

54. In the instant case, the plaintiff has stated that his chopri Ex.P-1/3 did not contain any entry of any transaction dated 06.5.1992. He has, however, admitted that Ex.D-1/1 is the corresponding chopri of defendant No.1 where the said transaction of 3,000 shares of Bindal Agro and 35,000 share of Oswal Agro has been recorded. If this was an error as has been contended by the plaintiff it was his duty to list this error in the error correction book and submit it to defendant No.2. PW-1 has admitted that he was, in fact, maintaining the error correction book. He has also admitted that he has not filed on record the said error correction book. Plaintiff has also not summoned the record of defendant No.2 to show that if any such error was brought to the notice of defendant No.2 or not.

55. In his cross-examination he has admitted that he had served a notice upon defendant No.2 for the production of their original chopri; however, admittedly no steps had been taken thereafter by the plaintiff to either summon the second leaflet of the chopri of defendant No.2 which would have reflected the submission sought to be submitted by the plaintiff that there was no entry of the

transactions alleged of 06.5.1992; the error correction book has also not been placed on record or proved by the plaintiff.

56. PW-2 has admitted that all bargains are not entered in the error correction book and it is only a mistake in the chopris which are corrected in the error correction book; if there was any error in the transactions of 06.5.1992 it was incumbent upon the plaintiff to have placed on record the error correction book to substantiate this submission.

57. Match list of 07.5.1992 and has been placed on record. This document reflects that it is hand delivered in order that necessary corrections can be pointed out by the respective parties before the final match list is prepared. The consolidated/final match list for the settlement ending on 08.05.1992 prepared by defendant No. 2 has been proved as Ex.P-1/7. This final match list reflected the two transactions between the plaintiff and M/s B.K.Jalan & Co. i.e. 3,000 shares of Bindal Agro sold @ Rs.75 per share and 35,000 shares of Oswal Agro sold by defendant No.1 to the plaintiff @ Rs.126.40 per share.

58. This is the statement of account for the period ending 8.05.1992 and reflects that an amount of Rs.14,66,550/- is due to M/s B.K.Jalan & Co. by the plaintiff; membership number of defendant No.1 being No.239 and membership number of the plaintiff correctly reflected as No.273.

59. Even as per his own showing and the documents proved by the plaintiff this transaction/bargain stood complete on 8.5.1992 in terms of this final match list prepared by defendant No.2 showing that the aforestated two transactions.

60. Plaintiff has also not been able to cite before this Court any bye-law or point out any provision either in the articles of association or regulations of defendant No.2 to substantiate the submission, as has been ardently argued that a contract is constituted only when the chopris of both the parties are correspondingly signed and in the absence of which there could be no contract. On this count, the plaintiff has admitted that chopri of defendant No.1 had reflected the transaction of 6.5.1992; this was an error; the error correction book was maintained by the plaintiff; the same has not been placed on record; reasons are best known to the plaintiff himself for not doing the same; the plaintiff has also not placed before this court the second leaflet of the chopri which as per procedure had to be submitted by the respective parties to defendant No.2. The final matching list prepared by defendant No.2 Ex.P-1/7 clearly shows that this transaction of 3,000 share of Bindal Agro and 35,000 shares of Oswal Agro had been sold by defendant No.1 and purchased by the plaintiff for the settlement ending on 8.5.1992.

61. In 1999 (Supl.) Aub LR 32 (Bombay) the Stock Exchange Mumbai Vs. Vinay Bubna and others it has been held by the

Division Bench of the High Court of Bombay that the bye-laws of the Exchange are framed in exercise of the powers conferred under Section 9 of the Securities Contracts (Regulations) Act; they are statutory.

62. Chapter VI of the bye-laws of defendant No.2 contains the procedure for comparison of bargains. Bye-law 74 stipulates that it shall be the duty of each member with a view to prevent mistakes to compare each contract in the business day following the one to which the bargain is made. Bye-law 78 stipulates that a member's failure to compare his contract as herein provided and if a difference which would have been discovered on such a comparison is subsequently discovered, the defaulting member shall not be entitled to call for performance of the contract except as it appears in the books of the other pending to the transaction. By the application of these bye-laws which have a statutory and binding force plaintiff is even otherwise estopped from raising any dispute qua a transaction for which he did not point out the error/mistake on the following business day i.e. at best by 9.5.1992; the following working day after 8.5.1992.

63. As such the transaction between the plaintiff and defendant No.1 as recorded on 6.05.1992 was a valid and binding contract between the parties.

64. Plaintiff has submitted that he was aggrieved by this final match list but no action was taken by defendant no.2 in this

regard. He has drawn the attention of this Court to the first communication dated 15.5.1992 mark B addressed by the plaintiff to the executive director of defendant No.2. This document has not been proved as per the rules of evidence. It has only been marked. The proper course would have been to have summoned the record of defendant No.2 to prove that this letter had in fact been sent by the plaintiff to defendant No.2. This course has not been adopted.

65. The second communication relied upon by the plaintiff is dated 12.1.1993. As per the averments made in the plaint, the plaintiff had alleged fraud qua defendant No.1. Defendant No.1 had reported this matter to defendant No.2 vide this communication and had raised a claim of Rs.27.70 lacs against defendant No.1. Admittedly, this document has neither been produced nor proved. It has not seen the light of the day.

66. The next communication dated 4.6.1993 Mark D has been relied upon by the plaintiff as a letter addressed by him to defendant No.2. This document has also not been proved as per law. The plaintiff did not take recourse to summoning the record from the office of defendant No.2 to prove that he had in fact sent this communication to defendant No.2 wherein he had set up claim of Rs.27.70 lacs against the defendant No.1. This communication cannot be looked into.

67. Mark G is a communication dated 27.7.1993 purported to have been addressed by the executive director of defendant No.2 to the plaintiff. This document has also not been proved. Even otherwise, it makes a reference to the counter claim of Rs.2,72,250/- raised by defendant No.1 against the plaintiff; it does not make any reference to the plaintiff's claim against the defendant No.1.

68. The communication dated 3.8.1993 Mark H purported to have been addressed by the plaintiff to the executive director of defendant No.2 has again not been proved as per law. This document also cannot be looked into.

69. Mark I is a communication dated 4.8.1993 written by defendant No.2 and addressed to the plaintiff wherein he has been requested to make the payment in terms of the decision of defendant No.1; this document has also not been proved as per law.

70. In the plaint, it has been averred that on 09.11.1993 a letter was addressed by executive director of defendant No.2 wherein it has been stated that the Board has considered the matter and granted approval to the plaintiff to approach the authority in law to recover his dues from the defendant No.1. This letter has neither been produced nor proved. This document has been placed on record along with the reply filed by the plaintiff to the application of defendant No.1 under Section 34 of the Arbitration

Act but the plaintiff has not cared to prove it in the course of the evidence.

71. The subsequent theory of this being a fraud played upon the plaintiff in collusion of defendant No.1 and defendant No.2 has not in any manner been proved by the plaintiff. The communications and the claims as sought to be set up by the plaintiff against the defendant Nos.1 to 2 have not been proved.

72. The subsequent sale of the shares by the plaintiff in the market were a transaction conducted by the plaintiff for which the defendant No.1 cannot in any manner be held liable for a loss, if any, incurred by the plaintiff. The transaction of 06.5.1992 stood concluded between the plaintiff and the defendant No.1 as per the settlement date of 8.5.1992.

73. Plaintiff is not entitled to recover any amount. Since the principal amount is not recoverable by the plaintiff the question of payment of interest does not arise.

74. Issue No.2 is decided against the plaintiff and in favour of the defendants.

75. RELIEF:

76. Suit of the plaintiff is dismissed. Counter claim of the defendant No. 1 is also dismissed. No order as to costs. Decree sheet be prepared. File be consigned to Record Room

**JANUARY, 29 2010/nandan**

CS(OS) No.1278/1995

**(INDERMEET KAUR)  
JUDGE**

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