

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.1904 of 2014 (O&M)
Date of Order: 14.09.2018**

T.R.Mahajan & others

..Appellants

Versus

M/s NET Share(P) Limited

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Mahajan, Advocate,
for the appellants.

Mr. K.S.Dadwal, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit for recovery of the amount of Rs.6,04,836/- along with pendente-lite and future interest @ 12 % per annum.

Plaintiff, a limited company, filed a suit claiming that they are dealing in sale and purchase of shares in National Stock Exchange and Bombay Stock Exchange. Defendants have been dealing with them and had signed a contract dated 26.02.2000. On settlement of account, it was found that Rs.4,20,028.66 paise was due and balance recoverable which the defendants are refusing to pay.

In the written statement, defendants took a stand that they have never dealt with the plaintiff-company and they have no concern with the same. When defendant no.2 appeared in evidence, he admitted that he

deposited a sum of Rs.18,000/- with the plaintiff-company and admitted his signatures on Ex.D1.

Both the courts have found that the stand taken by the defendants stood falsified by overwhelming evidence adduced by the plaintiff-company apart from his admission in the cross-examination. The courts have further noticed that on behalf of the plaintiff-company, Sanjiv Verma, authorized agent, had appeared and defendants did not conduct any cross-examination, therefore, his evidence goes un-rebutted and unchallenged.

Learned counsel for the appellants has proposed the following issues:-

- “1. Whether respondent company can institute suit for recovery against appellants for an amount alleged to be due from the appellants to some another companies without the authority in writing of the said anotehr companies?”*
- 2. Whether any person can institute suit for recovery for and on behalf of respondent company without any authority in writing of the respondent-company?*
- 3. Whether respondent company can carry on the business of trading in shares as Stock Broker or Sub Broker without getting certificate from the Securities and Exchange Board of India in view of the bar contained in Section 12(1) of SEBI Act?*
- 4. Whether respondent company can carry on the business of sale/purchase of share without making an agreement*

in writing with the appellants and getting margin of 20% from them in view of the statutory norms prescribed by SEBI?

5. *Whether any court is competent to take into consideration the documents exhibited by any witness in chief examination who never appeared for cross-examination?"*

In support of his submission, learned counsel pointed out that in fact the plaintiff company had filed a suit for recovery of amount which was due and payable to M/s Manmohan Gandhi Share and Stock Brokers Limited and M/s M.B.Gandhi Shares & Stock Brockers (P) Limited but the plaintiff company had no authorization to file a suit on their behalf. Whereas learned counsel for the respondent has pointed out that Ex.P12 available at page 46 is authorization issued by the aforesaid companies. Thus, questions No.1 and 2 are covered by the aforesaid contentions.

With regard to question no.3, learned counsel for the appellant could not draw attention of the court to any submissions made to this effect before the courts below. The question of law which has been framed is based on appreciation of evidence and therefore, it cannot be permitted to be raised for the first time before the High Court.

Questions no.4 and 5 are also questions of fact and they have not been raised before the courts below. Once, there is documentary evidence available on the file in the shape of Ex.P/2, Ex.P3, Ex.P4 and Ex.P5, which prove that defendants-appellants were dealing with the plaintiff-company and they had also issued a cheque Ex.D1, on which signatures are admitted, no error can be found in the judgments passed by

the courts below.

Hence, the regular second appeal is dismissed.

September 14, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No