11.10.2023.
Item No. 54.
Court No. 13
ap

F.A. No. 38 of 2019
With
I.A. No. CAN 1 of 2018 (Old CAN No. 4137 of 2018)

Anil Kumar Garg
Versus
Vishnu Bidasaria & Ors.

Ms. Usha Doshi,
Ms. Priyanka Gope.
...For the appellant.

1. The appeal is directed against the judgment and order dated 17th April, 2018 passed by the learned Judge, 4th Bench, City Civil Court at Calcutta in Title Suit No. 1521 of 1998.

2. By the impugned judgment and decree, the learned Court below dismissed the suit and rejected the prayer of the plaintiff for a declaration that the complaints made by the defendant nos.1, 2 and 3 to the Calcutta Stock Exchange and other agencies to be null and void.

3. The brief facts relevant to the case are that the plaintiff is a stockbroker. He purchased certain shares of M/s. Hindustan Unilever Limited, M/s. I.T.C. Limited, M/s. BPL Limited, M/s. Kesoram Industries Limited and M/s. HDFC Assets Management Company Limited from the defendant no.4. The physical scrips were accompanied with blank transfer deeds. The said shares are supposed to have been purchased by the

defendant no.4 from the defendant nos.1, 2 and 3. The petitioner introduced the said shares in the Stock Exchange and traded them.

4. It appears that the said defendant nos.1, 2 and 3 have filed a complaint with the local Police Station that the share certificates along with Bank Transfer Form have been stolen.

5. A separate complaint has been lodged with the Calcutta Stock Exchange. The Stock Exchange in turn, charged the plaintiff with "bad delivery", for having introduced tainted shares into the market.

6. The defendant nos.1, 2, 3 and 9 filed written statement. The Court below framed the following issues:

> *"1. Is the suit maintainable in its present form and prayer?*
> *2. Has the plaintiff any cause of action to file this suit?*
> *3. Has this Court jurisdiction to try this suit?*
> *4. Is the plaintiff entitled to get a decree as prayed for?*
> *5. To what other relief/reliefs, if any, is the plaintiff entitled to get?"*

7. Issue nos.2 and 3 with regard to the territorial jurisdiction were found in favour of the plaintiff. However, issue nos.1, 4 and 5 were decided against him and the suit was dismissed.

8. The Court below found that the plaintiff has not been able to produce any document or evidence to show that the defendant nos.1, 2 and 3 had sold the said shares against valuable consideration to the defendant no.4. He was also not able to show any receipt of payment to the defendant no. 4. Even before this Court the learned Counsel for the appellant/plaintiff has not been able to demonstrate any clear evidence of any payment being made to the defendant no.4 from whom her client is stated to have purchased the said disputed shares.

9. Ms. Doshi places reliance upon a stock broker's ledger exhibited in the Court below, and submits that the same is a common practice followed in stock exchanges and stock transactions, to evidence payment of money.

10. This Court is unable to accept the said argument that the said ledger has not been proved in accordance with law. The ledger does not appear to have been certified by any Authority constituted under law.

11. In view of the above, this Court is of the view that the impugned judgment calls for no interference.

12. The appeal being F.A. No. 38 of 2019 shall stand dismissed.

13. In view of dismissal of the appeal itself, the connected application being CAN 1 of 2018 shall also stand dismissed.

14. Interim order, if any, shall stand vacated.

15. There will be no order as to costs.

16. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(***Rajasekhar Mantha, J.***)

(***Supratim Bhattacharya, J.***)