Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

SECP APPEAL NO. 06 OF 2015

Siddiq Moti (deceased) through legal heirs.

Vs

Appellate Bench Registry, SECP, Islamabad and 02 others.

APPELLANT BY:	Mr. Shezada Mazhar, Advocate.
RESPONDENTS BY:	Mr. Shahzad Ali Rana, Advocate for SECP. Respondent No.3 in person.
DATE OF HEARING:	31.10.2024.

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BABAR SATTAR, J.- This appeal has been filed under Section 34 of the Securities and Exchange Commission of Pakistan Act, 1997 **("SECP Act")**, against the decision rendered by the Appellate Bench of the Securities and Exchange Commission of Pakistan **("SECP")** by order dated 22.05.2015, in exercise of authority under Section 33 of the SECP Act, whereby the order dated 25.09.2009 passed against the Appellant by Director Securities Market Division of SECP **("SMD")** was upheld.

2. A dispute arose between respondent No.3, Mr. Naeem Hussain, and the Appellant Mr. Saddiq Moti **("Appellant")** (whose legal heirs are pursuing the instant appeal), when respondent No.3 filed a complaint with SECP dated 22.12.2000, alleging that the Appellant had illegally and without authority transferred the shares of respondent No.3 as reflected in the trading record maintained with the Central Depository Company **("CDC")**, as of 14.06.2000.

The Appellant contested the claims made by respondent No.3, and submitted that respondent No.3 continued to undertake trading activity after 14.06.2000, and the transfer of shares from his sub-account were undertaken for purposes of settling debit balance owed by respondent No.3.

3. In terms of background, a few clients of the Appellant filed complaints before the SECP, alleging that the Appellant's brokerage house had illegally and without authorization transferred shares from their sub-accounts to other accounts. The SECP, while taking cognizance of such complaints, passed an order dated 01.03.2001, directing the Appellant to transfer the shares of one of the complainants (Mr. Abdul Wahab Memon) to his sub-account and sought further material evidence in relation to the other complaints. The Appellant challenged order dated 01.03.2001 passed by Executive Director Securities Market Division **("SMD")**, before the Appellate Bench of SECP. The Appellate Bench of SECP, by order dated 13.06.2001, upheld the order of Executive Director SMD, confirming that the Appellant had transferred the shares of the complainant illegally and without lawful authority and that a broad authorization in the account opening form was not sufficient authorization for purposes of transfer of shares under Section 24(1) of the Central Depositories Act, 1997 **("CD Act")**. The Appellant had also challenged the jurisdiction of SECP and that of Executive Director SMD to adjudicate the complaint. The Appeal filed by the Appellant against order of the Appellate Bench of SECP dated 13.06.2001 was heard by the Lahore High Court and by order dated 24.03.2004 such appeal was dismissed and the orders passed by the SECP were upheld. The Appellant then appealed the

judgment of the Lahore High Court before the Supreme Court through C.P No. 1388 of 2004, which was dismissed by order dated 21.10.2010,

4. The jurisdictional objections raised by the Appellant in the instant appeal with regard to SECP adjudicating the complaint and passing an order in exercise of authority under the SECP Act read together with the CD Act were, therefore, available to the Appellant in the matter of ***Mr. Saddiq Moti vs. Appellate Bench to Securities and Exchange Commission of Pakistan*** **(Civil Appeal No. 475/2006 in C.P No. 1388 of 2004)**, which were agitated before the Lahore High Court and then before the Supreme Court and were dispelled all the way. This Court, therefore, need not adjudicate afresh the jurisdictional challenges to the exercise of authority by SECP in adjudicating the complaint of illegal transfer of shares by the Appellant, as the Appellant agitated the same before the relevant adjudicatory forums. With the order of the SECP in favour of another complainant being upheld by the Supreme Court, the question of authority of SECP to adjudicate such consumer complaints stands settled.

5. The learned counsel for the Appellant took this Court through the facts of the case and read through the material adduced before the investigators appointed by SECP culminating in investigation report dated 09.04.2003, the material produced before Director SMD, who passed order dated 25.09.2009, and the material produced before the Appellate Bench of SECP who had passed the impugned order dated 22.05.2015. The factual

arguments need not be recapitulated in the interest of economy as this is a second appeal in terms of Section 34 of the SECP Act.

6. In summary the learned counsel for the Appellant argued that the SECP did not take into account the material produced before the investigators and Director SMD to establish that respondent No.3 owed debit balance to the Appellant, to set-off which the Appellant undertook transactions in the sub-account of respondent No.3. It was further submitted that respondent No.3 had not discharged his onus to establish payment of consideration for the securities standing to his credit in the CDC transaction reports, which was also not taken into account by SECP. It was submitted that SECP did not take into account the fact that by virtue of signing an account opening form with the Appellant, respondent No.3 had granted the Appellant wide authority to handle the securities in his sub-account for purposes of Section 24 of the CD Act read together with Section 43 of the CD Act. And it had been held by SECP in ***Honorary Capt. (Retd.) Noor Ahmed vs. Aly Osman, Joint Director (Securities Market Division) SEC*** **(2006 CLD 304)** that authorization in the account opening form was sufficient for purposes of settling a debit balance due from a client. It was asserted that the investigators appointed by the SECP as well as Director SMD who passed order dated 25.09.2009 exhibited bias against the Appellant and wrongly concluded without any reasoning that the Appellant had breached provisions of the law.

7. The learned counsel for the SECP defended the orders passed by Director SMD and the Appellate Bench of SECP. He

submitted that the investigation report and the order dated 25.09.2009 had documented the relevant facts in sufficient detail. A perusal of the investigation report as well as the order dated 25.09.2009 established that the Appellant was afforded opportunities over a period of almost nine years to produce relevant material before SECP. Despite repeated opportunities, the Appellant failed to produce any authorization by respondent No.3 to transact in his sub-account after 14.06.2000, which period formed the subject-matter of the complaint. The assertion of the Appellant that the account opening form and provisions therein constituted sufficient authority to undertake transactions in the sub-account of respondent No.3 was considered and dispelled by SECP in view of similar challenge brought by the Appellant before the Lahore High Court and the Supreme Court that was ultimately decided by the Supreme Court in Civil Appeal No. 475/2006 in C.P No. 1388 of 2004 by judgment dated 21.10.2010, wherein a similar plea of authorization based on provisions of the account opening form were taken by the same Appellant, and were found wanting by SECP, the Lahore High Court, and the Supreme Court. He submitted that as a factual matter respondent No.3 had produced relevant statements from banks establishing payment of consideration for the trades that were reflected in the CDC trading statements up until 14.06.2000, and the Appellant had failed to produce any material to substantiate the debit balance to settle which the Appellant claimed to have undertaken transactions in the account of respondent No.3. He submitted that in terms of Section 16 of the Securities and Exchange Ordinance, 1969 (subsequently repealed through Securities Act, 2017) **("Securities Ordinance")**,

the Appellant as a member of the stock exchange could not extend any credit for purposes of purchase of any securities by respondent No.3 and it could therefore not be fathomed that for a period of six months the Appellant continued to undertake purchases on behalf of respondent No.3 without settling previous trades in a manner that the debit balance continued to grow and yet the Appellant continued to reflect purchase of securities in the Appellant's sub-account. He further submitted that Section 24(1) of the CD Act mandated that a stock broker could only handle an authorized entry of securities in a sub-account with the authority of the sub-account holder, and the authority relied on by the Appellant in the account opening form was insufficient for such purpose. The Director SMD SECP had correctly held in order dated 25.09.2009 that the Appellant had failed to discharge the onus of proof with regard to the creation of a debit balance and with regard to being authorized to transact in the sub-account of respondent No.3. Such factual findings were subsequently confirmed by the Appellate Bench SECP and ought not be interfered by this Court in a second appeal.

8. Respondent No. 3, appeared in person, and also submitted written arguments. He submitted that he had a relationship with the Appellant, who maintained a sub-account No.1034 in his name with CDC. His claim was based on the trading statement issued by CDC as of 14.06.2000, which was the last day when he transacted any business with the Appellant through the latter’s agent. He submitted that his transactions with the Appellant were through an agent of the Appellant named Junaid Ali. He submitted that the Appellant had confirmed in a submission made to SECP at the initial

stages after filing of the complaint that he had continued to transact with the Appellant up until 14.06.2000 and consequently any question of further transactions after such date up until 12.12.2000 did not arise. He submitted that even the agent Junaid Ali only worked with the Appellant up until 14.06.2000, and therefore, the question of any debit balance arising after 14.06.2000 did not arise. He submitted that the Appellant had failed to establish how the Appellant was claiming that there was a debit balance due from respondent No.3 in the amount of Rs.1,120,174/- or Rs.2,491,175/- as no corroborating material had been produced by the Appellant despite repeated opportunities provided to him. He submitted that on the contrary, the Appellant was relying on the trading statements and summaries issued by CDC as acknowledged by the Appellant, and had produced before SECP a record of payments made by him in banking transactions through the Muslim Commercial Bank Limited and Prime Commercial Bank Limited for settling the trades that were reflected in the CDC trading statement dated 14.06.2000.

9. Given that the dispute has been pending before one forum or the other since 2000, this Court, with the assistance of the learned counsels for the parties, has taken a detailed look at the factual aspect of the matter and perused the investigation report dated 09.04.2003 as well as the impugned order passed by Director SMD dated 25.09.2009 (which itself is a 52-page order), which deal with the facts as determined on the basis of the materials produced by the contesting parties in significant detail. This Court is satisfied with the factual determinations made by Director SMD in order dated 25.09.2009, and that the order of

Appellate Bench SECP dated 22.05.2015 suffers from no misreading or non-reading of facts. Repeated opportunities were provided to the Appellant to produce relevant material and to counter the material produced by respondent No.3. The Appellant has chosen to rely on manually prepared ledgers while arguing that such ledgers were in accordance with established practice, and a broad authorization included in the account opening form signed by respondent No.3. The learned counsel for the Appellant has been unable to point to any relevant material, which if considered, would lead the SECP to render a different conclusion with regard to the legality of the transfers undertaken by the Appellant from the sub-account of respondent No. 3.

10. This Court is cognizant of the fact that this is a second appeal in terms of Section 34 of the SECP Act. As a factual matter, the initial complaint came before the SECP, in which an order was passed for the appointment of investigators. The investigators then carried out their proceedings and produced a report dated 09.04.2003. Subsequently, proceedings were initiated against the Appellant, which culminated in the 52-page order passed by Director SMD dated 25.09.2009 dealing with the transaction in each and every security within the sub-account of respondent No.3 in significant detail. The facts as determined by Director SMD were then agitated before the Appellate Bench of SECP, which reaffirmed them. These concurrent factual determinations have then been impugned before this Court. The scope of the jurisdiction of a High Court in exercise of authority under Section 34 of the SECP Act came before the Lahore High Court in ***Fayyaz Ahmed vs.***

Muhammad Sarfraz Ghumman **(2005 CLD 1229)** in which the following was held: -

> *"As a rule, an appeal to this Court under section 34 of the Securities and Exchange Commission of Pakistan Act, 1997 is a second appeal and therefore, its scope is governed by section 100 of Code of Civil Procedure, 1908. According to that section a second appeal to this Court lies only on three grounds, namely, that the decision was contrary to law or a usage having the force of law; that the decision had failed to determine some material issue of law or usage having the force of law and lastly that a substantial error or defect in the procedure provided by the Code or any other law for the time being in force had happened which might possibly have produced error or defect in the decision of the case upon the merits. The appellant has not agitated any of the aforesaid three grounds to invoke the appellate jurisdiction of this Court. Mere repetition of facts can hardly do any good to the case of an appellant in second appeal. The concurrent findings of fact by a Tribunal of exclusive jurisdiction as specialized agency appointed by the Government cannot be interfered with in second appeal merely for the reason that on reappraisal of certain documents or factual submissions a different decision could have possibly been taken. The finding of fact by a specialized Tribunal, except of course which are patently without any material available on record, cannot be disturbed in second appeal nor a fresh appraisal of the evidence brought on record can be undertaken unless one of the three conditions, as contained' in section 100, C.P.C., are answered…"*

11. This Court is in agreement with the findings of the Lahore High Court in ***Fayyaz Ahmed***. It is not for the High Court while exercising jurisdiction under Section 34 of the Act and hearing a second appeal to undertake searching scrutiny of the material

produced before two adjudicatory forums provided under the SECP Act and second-guess the factual determinations made by such forums. It is for the Appellant to establish in terms of Section 100(1) of CPC that the impugned decision is contrary to law, or the order impugned has failed to determine a material issue of law or suffers from substantial procedural defect affecting the decision of the case in terms of sub-clauses (a), (b) and (c) of Section 100(1) of CPC for the High Court to interfere with concurrent factual findings rendered by the SECP and the Appellate Bench of SECP. In the instant matter, the Appellant has failed to make out case that the factual findings as rendered by Director SMD in order dated 25.09.2009 and the Appellate Bench SECP in order dated 25.05.2015 suffer from any such defects or infirmities.

12. The Appellant appears to have misconceived provisions of the CD Act in claiming that the account opening form vested in the Appellant the authority to transact in the sub-account of respondent No.3 without explicit authorization and that such transactions could be undertaken by the Appellant to settle debit balances claimed by the Appellant. While this Court need not get into facts for reasons already mentioned above, it has correctly been identified in the orders issued by SECP that the Appellant failed to produce any material before SECP to establish that it made calls upon respondent No.3 to settle any debit balance, which remained unsettled and resulted in the Appellant transferring securities from his sub-account to another account.

13. SECP is also correct in relying on Section 16 of the Securities Ordinance, which is applicable to the dispute at hand,

and bars, in terms of Section 16(a), a member from extending credit to any person for purposes of purchasing any security. The Appellant's basic argument in the instant matter is that he continued to purchase securities on behalf of respondent No.3 and record such transactions in the sub-account of respondent No.3 maintained with CDC despite the fact that respondent No.3 had not settled previous trades. And consequently the debit balance due and payable by respondent No.3 continued to grow, which was settled by the Appellant during the period from 14.06.2000 to 12.12.2000. Other than not making logical sense, such continuing transactions on part of the Appellant would also fall foul of the Appellant's obligations under Section 16(a) of the SECP Ordinance.

14. The Appellant has sought to rely on Section 24(2) to argue that respondent No.3 had not paid consideration for the securities reflected in his CDC account, and was also undertaking transactions on behalf of other individuals, and could therefore not be regarded as the beneficial owner of such securities. This reading disregards Section 24(1) of the CD Act, which explicitly prohibits a broker from handling any book-entry securities entered in sub-accounts maintained with CDC without the authority of the sub-account holder. As the securities in question had been entered in the sub-account of respondent No.3 maintained with CDC as confirmed by the CDC trading summary dated 14.06.2000, it is Section 24(1) that was applicable and required the Appellant to be granted permission by respondent No. 3 to transact in and/or handle such securities. The Appellant has also sought to misconstrue the requirements of Section 4(1), (2) and (3) of the CD Act, which state the following:-

4. Central depository system.—*(1) A central depository shall establish a central depository system whereby, in accordance with the regulations,—*

(a) (i) accounts may be opened and maintained with the central depository by the account-holders so as to record the title of the account-holders to book-entry securities entered in such accounts; or

(ii) where the account-holders are participants, sub-accounts may be opened and maintained, as part of the accounts of the participants, with the central depository by the participants on behalf of the sub-account holders so as to record the title of the sub-account holders to book-entry securities entered in such sub-accounts;

(b) transfers of such book-entry securities shall be effected electronically or by any similar means; and

(c) pledging of such book-entry securities may be effected in accordance with section 12.

(2) Where any securities are issued to or registered in the name of a central depository or transferred by endorsement to or deposited with a central depository, such securities shall, in accordance with the regulations, be entered in the relevant accounts or sub-accounts, as the case may be as book-entry securities.

(3) Notwithstanding anything contained in sub-section (1), a participant may, with the written authorization of his clients, enter book-entry securities beneficially owned by the clients in his own account without establishing sub-accounts in the names of such clients in the central depository system:

15. As it is evident from a plain reading of the aforementioned provisions where an account or sub-account is maintained by the CDC, the title to securities reflected in such sub-account vests in the account holder. Section 4(3) of the CD Act, as relied upon by the Appellant, merely provides that a stock broker with the written authorization of his client may enter the securities beneficially owned by such client in his own account without establishing a sub-account in the name of such client. The said provision does not apply in view of the facts of the instant case, where the sub-account was in fact established by the Appellant in the name of respondent No.3 and it is with regard to transactions by the Appellant in the said sub-account, without authorization by the Appellant, that the complaint was filed.

16. The requirements of Section 4(1) of the CD Act are unequivocal. The entire purpose of promulgating the CD Act, as evident from its recital, was to *"make provisions for the establishment and operation of book-entry systems for the transfer of securities by central depository companies".* The scheme of the CD Act requires brokers to record transactions and securities within the accounts and/or sub-accounts of clients in order to document where the title of such securities vests. Where an account statement issued by CDC confirms that the title vests in a certain client, the onus is then on the broker transacting in or handling such securities to establish that he has legal authorization to do so. It is in this context that the SECP correctly held that the Appellant had failed to discharge his onus in terms of provisions of the Qanun-e-Shahadat Order, 1984 **("Qanun-e-Shahadat Order")** that he had authorization to make transactions in the sub-account

of respondent No.3 or that the title of securities registered and reflected in the sub-account of respondent No.3 did not actually vest in respondent No.3 as he had not paid consideration for the same. In holding that the onus to prove such facts, in view of provisions of CD Act read together with requirements of the Qanun-e-Shahadat Order, were on the Appellant, the orders issued by SECP suffered from no legal infirmity.

17. The appellant has also relied on the decision rendered by the Appellate Bench of SECP referred to as ***Honorary Capt. (Retd.) Noor Ahmed*** arguing that broad authorization within the account opening form is sufficient for purposes of continuing to undertake transactions in the sub-account of a client. The facts of the said case are distinguishable. In the said case, it was admitted that the broker had ordered certain transactions and that there was a debit balance, for the settlement of which the broker had made calls. The very next day when the debit balance arose and after the failure of the client to settle the debit balance, the broker disposed of certain securities to settle the account. In the instant matter, it is the Appellant's case that it took him over six months to settle debit balances accumulated by respondent No.3. As a matter of law, the question of authorization was dealt with by SECP in order dated 01.03.2001 and order dated 13.06.2001 in the matter of ***Sadiq Moti vs. Shahid Ghaffar***, in which the Appellant Bench had held that broad authorization in an account opening form is insufficient for purposes of a broker continuing to transact in and handle the securities that are reflected in an account or sub-account maintained with CDC in the name of a client. It was this order that attained finality and was upheld by the Supreme Court

in C.P No.1388 of 2004 by Judgment dated 21.10.2010. Further, by virtue of the Pakistan Stock Exchange Regulations, Regulation 4.18.1(c) of PSX Rules now specifies how a collateral account is to be maintained and how settlement with regard to any outstanding payment due from a client is to be dealt with. While the regulations in PSX Rule Book are not applicable to the dispute at hand, the decision of SECP reported in ***Honorary Capt. (Retd.) Noor Ahmed*** cannot be cited as good authority for the proposition that board authorization in an account opening form is sufficient for purposes of Section 24 read with Section 4 of CD Act.

18. For the aforementioned reasons, this Court finds that the impugned orders of the Director SMD dated 25.09.2009 and Appellant Bench SECP dated 22.05.2015 suffer from no infirmity. The appeal is without merit and is ***dismissed*** with a cost of Rs.100,000/-, Rs.50,000/- of which shall be payable to SECP and Rs.50,000/- of which shall be payable to respondent No.3 by the Appellants within a period of thirty days.

(BABAR SATTAR)
JUDGE

Announced in open Court on **19.11.2024.**

JUDGE

Approved for reporting.

Shakeel Afzal/