

**Appellate Bench Orders**  
**Before the Appellate Bench No.1**

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*April 25, 2002*

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**Before Appellate Bench No. 1**

**In the Matter of**

**Appeal No. 33 of 2001**

Fayyaz Ahmed s/o Aziz  
Ahmed.....Appellants

*Versus*

Muhammad Sarfraz  
Ghumman.....Respondent  
No.1  
Lahore Stock Exchange Guarantee  
Ltd.....Respondent No.2  
Mr. Shahid Ghaffar, Commissioner, Securities  
Market.....Respondent No.3

**Date of  
Hearing**.....  
.....March 15, 2002

**Present:**

For the Appellant:

1. Mr. Fayyaz Ahmed, appellant in person

For the Respondents:

2. Mr. Abid Aziz Sheikh, Advocate, on behalf of Respondent No. 1  
3. Mr. Aamir Zareef Khan, Legal Advisor, LSE, Respondent No. 2

4. Mr. Ally Osman, Joint Director (SM) & Ms. Sumbul Naved Qureshi, Junior Executive (SM) on behalf of Respondent No.3

### Order

This is an appeal dated nil filed by Mr. Fayyaz Ahmed, (hereinafter referred to as the “Appellant”) on December 26, 2002 against the order (impugned order) passed on August 21, 2001 by Mr. Shahid Ghaffar, then Executive Director (Securities Market Division).

2. The brief facts of the case are that the Appellant purchased 85,000 shares of F.F.C.J from Respondent No.1 during the period March 4, 1997 to June 15, 1997 for which Respondent No.1 neither provided any distinctive numbers, nor the physical shares; the said shares were purchased from Gujranwala branch office of Respondent No.1, which was managed/ run by one Engineer Mahmood Akhtar. On June 17, 1997 Engineer Mahmood Akhtar became the Member of Lahore Stock Exchange (hereinafter referred to LSE) himself and the liabilities and clients of Gujranwala office of Respondent No.1 were transferred to Engr. Mahmood Akhtar. Before the said transfer of accounts to Engr. Mahmood Akhtar all the investors individually signed account settlement certificates in which they absolved Respondent No.1 from all his liabilities towards them. Appellant, being one such investor also signed an account settlement certificate dated June 20, 1997 contents of which are as follows:

*“I was operating my account in the brokerage house of Mr. Sarfaraz Ghumman from 26.6.96 to 17.6.97. Now I have closed my account in his brokerage house. I have received my cash balance, shares, and my other kind of securities. After this date I will have no claim whatsoever against the said member”.*

The said account settlement certificate contained the Appellant’s signatures on the revenue stamp that was pasted thereon, his thumb impression and furthermore it was duly signed by two witnesses.

The Respondent No.1 instead of depositing the investors’ shares directly to Engr. Mahmood Akhtar, issued bills recording the deliveries of outstanding shares to the investors. Similarly, Respondent No.1 issued Bill No. 702 (Hereinafter referred to as a “bill”) in name of the Appellant recording the delivery of 85,000 shares to the Appellant. The said bill was issued on the letter head of Respondent No.1 containing the following statement:

*“SHARES DELIVERED TO FAYYAZ AHMED”.*

Furthermore, it also contained the Appellant’s signatures acknowledging the said delivery received by him from the Respondent No.1 .

Another receipt dated June 17, 1997 (hereinafter referred to as the “receipt”) was issued by Engr. Mahmood Akhtar as a Member LSE, acknowledging the delivery of 85,000 shares of F.F.C.J. received from the Appellant and containing the following statement:

*“SHARES RECEIVED FROM FAYYAZ AHMED”.*

The receipt was duly signed by Engr. Mahmood Akhtar.

Later on after the default of Engr. Mahmood Akhtar the Appellant demanded his shares from Respondent No.1 and was advised by him to file his claim against Engr. Mahmood Akhtar as the Appellant’s account had been transferred to Engr. Mahmood Akhtar and Respondent No.1 was absolved from all the liabilities towards the Appellant according to the account settlement certificate dated June 20, 1997 duly signed by the Appellant. Appellant lodged his claim against Respondent No. 1 with LSE, which was dismissed by its Investors’ Claim Committee on March 25, 1999 on certain grounds. Subsequently, a complaint dated February 15, 2000 was filed by the Appellant with the Commission, claiming 85,000 shares of FFCJ from Respondent No.1 .

3. The Appeal came up for hearing on March 15, 2002. Mr. Fayyaz Ahmed, the Appellant, appeared in person. Mr. Abid Aziz Sheikh, Advocate represented Respondent No.1. Mr. Aamir Zareef Khan, Legal Advisor, LSE represented the Lahore Stock Exchange. Mr. Ally Osman Joint Director, SM and Ms. Sumbul Naved Qureshi, Junior Executive, SM appeared on behalf of the Commissioner SM.

4. The Appellant was provided an opportunity to plead his case and elaborate his grievances against Respondent No.1. The Appellant in addition to his stance taken in his written appeal stated that the signatures of Engr. Mahmood Akhtar on a receipt dated June 17, 1997 acknowledging the delivery of 85,000 shares of F.F.C.J. received from the Appellant are forged as the Appellant never handed over the same to Engr. Mahmood Akhtar. He further alleged that the signatures of Engr. Mahmood Akhtar were fraudulently counterfeited/photocopied on the said receipt by Respondent No.1 in order to escape his liability towards the Appellant and to deprive the Appellant from his shares claimed against Respondent No.1.

5. The Appellant stated that when he signed an account settlement certificate dated June 20, 1997 it was blank containing no terms of agreement stated therein, and Respondent No.1 made no physical delivery of shares to him.

6. In reply to the questions raised by the Appellate Bench regarding the delivery of 40,000 shares of F.F.C.J. received by the Appellant from Engr. Mahmood Akhtar, the Appellant affirmed that he did receive a delivery of said shares from Engr. Mahmood Akhtar but those transactions were different from the purchases made through Respondent No.1. However, the Appellant failed to provide any documentary evidence to prove the same. The Appellant stated that he is unable to provide the documentary evidence of the purchase of those shares executed through Engr. Mahmood Akhtar as the same were never provided to him by Engr. Mahmood Akhtar and now it cannot be obtained from Engr. Mahmood Akhtar as he has absconded.

7. Legal Counsel of the Appellant, Mian Mehmood Rashid, Advocate submitted his written arguments through the Appellant and stated therein that 85,000 shares of F.F.C.J. were purchased by the Appellant from Respondent No.1, through his agent Engineer Memood Akhtar, at the Gujranwala office of Respondent No.1. However, the same were never delivered to him and later on the Appellant came to know that in fact those shares were never purchased. Respondent No.1 in connivance with Engineer Mehmood Akhtar transferred all the liabilities to the latter without consent of the Appellant; signatures of the Appellant were obtained on some blank documents without there being any actual or physical transfer of shares; on 17.06.97 Respondent No.1 issued a delivery bill in respect of shares of F.F.C.J. which does not mention any distinctive numbers; on the same day Engineer Memood Akhtar issued a receipt receiving the said shares and again no distinctive numbers were mentioned therein. The Appellant's counsel further stated in his written arguments that the Executive Director (SM) rendered his decision against the Appellant and held that the Appellant was unable to provide any proof that, his claim of 85,000 shares of F.F.C.J. lodged with LSE against Engr. Mahmood Akhtar and his claim of 85,000 shares of F.F.C.J. lodged with the Commission against Respondent No.1 are mutually exclusive; the impugned order did not appreciate the fact that no actual purchase of shares took place in the matter; if Respondent No.1 was unable to prove the purchase of shares through distinctive numbers as required under Section 89(2) of the Companies Ordinance, 1984 (the "Ordinance") which tantamount to its non-purchase, he should have been directed to return the money to the Appellant; the position of Respondent No.1 in respect of 85,000 shares of F.F.C.J. has been contradictory and he refused to have received payment in respect of shares as recorded in para 22 of the impugned order; amidst such contradictory stance taken by Respondent No.1 before the Executive Director (SM), the impugned order dismissed the Appellant's claim on account of his inability to prove independent purchase of 85,000 shares of FFCJ through Engr. Mahmood Akhtar.

8. The legal counsel of Respondent No.1 rejected the assertions presented by the Appellant and submitted that the Appellant continued trading with Engr. Mahmood Akhtar even after his account was transferred from Respondent No.1 to Engr. Mahmood Akhtar. Appellant's trading activity starting from July 2, 1997 to May 12, 1998 is evident from the ledger statements maintained by Engr. Amhmoood Akhtar, copies of which were provided by the Appellant himself. The counsel for Respondent No.1 also referred to

the advertisements published on July 13, 1997 in Urdu and English newspapers informing the investors about the closure of Respondent's branch office in Gujranwala and inviting claims against Respondent No.1, if any, within 15 days of the said publication. The counsel for Respondent No.1 asserted that the Appellant never filed his claim against Respondent No.1 at that time, and willingly continued trading with Engr. Mahmood Akhtar; the Appellant started demanding the distinctive numbers of 85,000 shares of F.F.C.J. from Respondent No.1 after a lapse of 8-9 months of signing the Account Settlement Certificate dated June 20, 1997.

9. On the allegation made by the Appellant that the signatures of Engr. Mahmood Akhtar were counterfeited/ photocopied on the receipt dated June 17, 1997 issued by Engr. Mahmood Akhtar, original receipt was provided which clearly showed that the signatures on the said receipt were the same as on the photocopies of the said receipt. The counsel for Respondent No.1 didn't dispute the purchase of the claimed shares but his submission was that the said shares were transferred to Engr. Mahmood Akhtar in the Appellant's account. He further stated that all the clients of Gujranwala Branch Office signed the said Account Settlement Certificate and after a formal agreement signed between Respondent No.1 and Engr. Mahmood Akhtar, accounts of the clients of Gujranwala Branch Office were transferred to Engr. Mahmood Akhtar and the same was also intimated to the LSE.

10. 10. Representative of LSE, Mr. Amir Zareef confirmed the statement made by the counsel for Respondent No.1 and referred to the copy of the said agreement that was signed on June 30, 1997 in which Engr. Mahmood Akhtar gave an undertaking as follows:

*"That in the event of any dispute of whatsoever nature I undertake that I will be personally responsible for all deals with all clients who made transactions at Gujranwala and that Mr. Sarfaraz Ghumman will not be held liable. Liability means financial and physical handling of shares."*

11. Furthermore, Mr. Zareef stated that the Appellant lodged his claim against Engr. Mahmood Akhtar on May 22, 1998 whereas claim against Mr. Sarfaraz Ghumman was lodged with LSE by the Appellant on August 6, 1998 which shows that the Appellant lodged his claim against Respondent No.1 only when he found out that the claimants of Engr. Mahmood Akhtar would be paid on pro-rata basis.

12. 12. Mr. Ally Osman, Joint Director, SM representing the Commissioner (SM) referred to the decision of the Investor's Claims Committee of the LSE and read out the grounds on which the Appellant's claim against Respondent No.1 was rejected by them. Grounds of the same are as follows:

- a. That the Appellant lodged a claim of the same 85,000 shares of F.F.C.J. against Engr. Mahmood Akhtar after his default, and the said documentary evidence was enclosed with the said claim against Engr. Mahmood Akhtar;
- b. That the Appellant had already received a delivery of 40,000 shares of F.F.C.J. from Engr. Mahmood Akhtar vide bill No.351 and 352 dated September 15, 1997;
- c. That claim against outstanding 45,000 shares of F.F.C.J. against Engr. Mahmood Akhtar was verified in favour of the Appellant on the basis of documentary evidence he attached with the claim against Respondent No.1;
- d. That the appellant signed an account settlement certificate with Respondent No.1 dated June 20, 1997 before Respondent No.1 transferred his clients to Engr. Mahmood Akhtar, indicating that the Appellant had no claim against Respondent No.1.

13. With regard to the allegation made by the Appellant that 85,000 shares of F.F.C.J. were never purchased by Respondent No.1, representatives of the Commissioner (SM) stated that on an enquiry made by the Commission, LSE informed that 42,000 shares of F.F.C.J. were purchased by Respondent No.1 on March 25, 1997 and 16,000 shares of F.F.C.J. were purchased on June 12, 1997 and the said transactions

were executed through LOTS (Lahore Online Trading System) which clearly shows that the purchases were actually made by Respondent No.1 . However, Respondent No.1 used to place sale/purchase order on LOTS after netting off sale/purchase orders of different clients of their Gujranwala Branch, which is a common practice in members' branch offices. It was further explained that 85,000 shares were delivered to the Appellant by Respondent No.1 vide Delivery Bill No. 702 which was duly signed by the Appellant. Furthermore a debit balance of RS.56,975/- was transferred to the Appellant's account with Engr. Mahmood Akhtar. In the first week of trading with Engr. Mahmood Akhtar the Appellant had purchase position of Rs.64,400/- and a sale position of Rs.1,72,925/- which he had to settle on the clearing date. Supposedly, if Engr. Mahmood Akhtar had not received 85,000 shares of F.F.C.J from Respondent No.1 and only debit balance of Rs.56,975/- was received in his account, as per general practice Engr. Mahmood Akhtar would not have allowed the Appellant to take such heavy trading positions. Furthermore, the Appellant took a sale position of 100,000 shares of FFCJ on July 27, 1997 and had purchase position of 50,000 shares of F.F.C.J. on August 1, 1997 and 50,000 purchase position on August 4, 1997. It indicates that sale of 100,000 shares of F.F.C.J. cancelled out the Purchases of 100,000 shares of F.F.C.J. On September 15, 1997 the Appellant received delivery of 40,000 shares of FFCJ from Engr. Mahmood Akhtar vide bill No.351 and 352 (duly acknowledged by the Appellant). At that time as 100,000 purchases had been cancelled out against 100,000 sales, delivery of 40,000 shares was made out of 85,000 shares that were received from Respondent No.1 and deposited with Engr. Mahmood Akhtar. As the delivery of only 45,000 remaining shares was outstanding in his account with Engr. Mahmood Akhtar, his claim for the same against Engr. Mahmood Akhtar was verified by the LSE, which was later on paid to the Appellant. Therefore if the Appellant had no shares transferred from Respondent No.1 in his account with Engr. Mahmood Akhtar he would not have outstanding delivery of 45,000 shares of F.F.C.J. after receiving a delivery of 40,000 shares from Engr. Mahmood Akhtar.

14. Appellant's net position as reflected in a statement made by Engr. Mahmood Akhtar covering a period from June 16, 1997 to May 23, 1998 was also presented by the Commissioner's representatives, indicating outstanding delivery of 45,000 shares of FFCJ as on May 23, 1998. Copy of Bill No.351 and 352 dated September 15, 1997 was also presented by the LSE.

15. The main issue in this matter is the apprehension/ allegation made by the Appellant that Respondent No.1 never purchased 85,000 shares of F.F.C.J. in his account therefore the same were never transferred to the Appellant's account with Engr. Mahmood Akhtar. In this regard a receipt dated June 17, 1997 issued by the Engr. Mahmood Akhtar indicating the delivery of 85,000 shares of F.F.C.J. received from the Appellant was examined in original and the allegation of its forgery is ruled out as Engr. Mahmood Akhtar's signatures were found to be made in ink pen and were not photocopied on the documents as alleged by the Appellant. However, it is true that distinctive numbers of the shares delivered to the Appellant vide Respondent No. 1 delivery bill dated June 17, 1997 and the shares received by Engr. Mahmood Akhtar vide his receipt dated June 17, 1997 were not mentioned therein, but keeping in view all the other documentary evidence and analysis of the ledger statements of Respondent No.1 and Engr. Mahmood Akhtar, it appears that the disputed shares were actually purchased by Respondent No.1 and were transferred to Engr. Mahmood Akhtar. As, there is no specific provision under law, which holds the Member responsible for not mentioning the distinctive numbers on delivery bills, therefore the Member cannot be legally held accountable for the same. However, statistically it was proved that the disputed shares were actually deposited in the Appellant's account with Engr. Mahmood Akhtar mainly because 100,000 purchases rightly cancelled out 100,000 sales executed through Engr. Mahmood Akhtar's account and out of the 85,000 shares that were received by Engr. Mahmood Akhtar the Appellant received delivery of 40,000 shares and claim for remaining 45,000 shares against Engr. Mahmood Akhtar was verified by LSE in favour of the Appellant.

16. The transactions aggregating 100,000 shares purchase of FFCJ and 100,000 shares sale of FFCJ were executed through Engr. Mahmood Akhtar have not been disputed at any point. Furthermore, the Appellant also acknowledged having received 40,000 shares from Engr. Mahmood Akhtar vide bill No.351 and 352 dated September 15, 1997.

17. It was also found that the Appellant before the Executive Director (SM), which documentarily proved that delivery of 40,000 shares was actually received by the Appellant, never presented copies of bill No. 351 and 352. In the hearing when LSE presented the same before the Bench the Appellant contended that the LSE obtained the said bills from the sources that are unknown to the Appellant in connivance with Respondent No.1 to deprive the Appellant from his shares claimed against Respondent No.1. However, authenticity of the delivery bill was not disputed by the Appellant.

18. The Appellant's claim of 45,000 shares of FFCJ against Engr. Mahmood Akhtar was verified by the LSE's Investors' Claims Committee on the basis of the same documents which he has submitted with his claim against Respondent No.1 which means that the Appellant is fully satisfied with his verified claim of 45,000 shares of F.F.C.J. indicating that he actually received 85,000 shares of F.F.C.J. in his account with Engr. Mahmood Akhtar because if he had not received the same in his account with Engr. Mahmood Akhtar, he would have no outstanding delivery of F.F.C.J. shares in his account with Engr. Mahmood Akhtar.

19. Keeping in view the foregoing, Appeal filed by the Appellant against Respondent No.1 is rejected.

**Announced :** Islamabad  
25 April, 2002

**( N.K. SHAHANI )**  
Commissioner  
(Insurance & Information Technology)

**( ABDUL REHMAN QURESHI )**  
Commissioner  
(Enforcement & Monitoring)