

IN THE SPECIAL COURT AT BOMBAY

Constituted under the Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992

SPECIAL SUIT NO.3 OF 2013

Shrikant Ghanshyamdas Biyani,]
of Bombay, Indian Inhabitant,]
residing at 14, Trupti Society, Parleshwar Road,]
Vile Parle (East), Mumbai – 400 057.] ...Plaintiff

Versus

1. Harshad S. Mehta (*Since Deceased*),]
Through Legal Heirs :-]
1A. Jyoti Mehta]
1B. Rasila Mehta]
1C. Atur Mehta]
Defendant Nos.1A to 1C all Indian]
Inhabitants, having their office at]
Maker Chamber No.6, 1205,]
12th Floor, Nariman Point, Mumbai]
and residing at Madhuli, Dr. Annie]
Besant Road, Worli, Mumbai – 400 018.]
]]
1B. Rasila Mehta (*Since Deceased*),]
Through Legal Heirs :-]
[1.1.1] Ashwin S. Mehta]
[1.1.2] Dr. Hitesh S. Mehta]
[1.1.3] Bhavna Manish Shah]
Defendant Nos.[1.1.1] & [1.1.2]]
R/at 32, Madhuli Apartments,]
Dr. Annie Besant Road, Worli,]
Mumbai – 400 018.]

Defendant No.[1.1.3] residing at]	
4A, Sambhav Tirth, 2A,]	
Bhulabhai Desai Road, Haji Ali,]	
Mumbai – 400 026.]	
]	
2. Associated Cement Company Ltd.,]	
having its registered office and also its]	
Share Department at Cement House,]	
Queen’s Road, Churchgate, Mumbai – 400 020.]	
]	
3. The Custodian,]	
Appointed under the provisions of the]	
Special Court (Trial of Offences Relating]	
to Transactions in Securities) Act, 1992,]	
having its office at 10 th Floor, Nariman]	
Bhavan, 227, Vinay K. Shah Marg,]	
Nariman Point, Mumbai – 400 021.]	
]	
4. Sudhir Shantilal Mehta,]	
226/227, Laxminiwas, Flat No.11,]	
1 st Floor, Next to GTB Nagar, Sion (East),]	
Mumbai – 400 022.]	...Defendants

Mr. Pradeep Sancheti, Senior Advocate, with Ms. Pallavi Bali, i/by Mr. Dinesh Guchiya, for the Plaintiff.

Mr. Vivek Sharma for Defendant Nos.1A, 1B, 1C and 4.

Mr. Satish Shah for Defendant No.2-ACC.

Mr. J. Chandran, with Ms. Shilpa Bhate, i/by Leena Adhvaryu & Associates, for Defendant No.3-Custodian.

CORAM : A.K. MENON, J.
JUDGE, SPECIAL COURT

RESERVED ON : 11TH JUNE, 2021.

PRONOUNCED ON : 23RD JULY, 2021.

JUDGEMENT :

1. The plaintiff, an individual, seeks (i) an order and decree against original defendant no.1-Harshad S. Mehta (since deceased), now his legal heirs viz. defendant nos.1A to 1C and defendant no.4, all of whom are notified parties and represented by defendant no.3-the Custodian, to handover 805 shares of defendant no.2-Associated Cement Co. Ltd. (ACC), as set out in Exhibit-B to the plaint; (ii) to declare that the plaintiff was and continues to be the owner of the shares described in Exhibit-B to the plaint viz. 805 shares of ACC Ltd.; (iii) for a direction to the defendants 1A to 1C and 4 to handover accretions, dividends, bonus shares etc.; (iv) to direct the defendant no.3-Custodian to handover accretions, dividends, bonus shares including sale proceeds of shares sold on behalf of defendant no.1; (v) to restrain the defendant no.2-ACC by an order of injunction from transferring the suit shares to defendant nos.1A to 1C and 4 being legal heirs of defendant no.1-HSM; (vi) to appoint the Court Receiver in respect of the suit shares as set out in Exhibit-B to the plaint and; (vii) to restrain the defendants 1A to 1C and 4 by an order of injunction from in any manner

alienating, encumbering, dealing with or disposing or parting with possession of the suit shares as set out in Exhibit-B to the plaint.

2. It is the plaintiff's case, as canvassed by Mr. Sancheti, that on 20th December 1990, the plaintiff handed over 805 shares of ACC to HSM through his brother Ramesh. HSM executed another memo bearing no.310 dated 20th December 1990 on that day in relation to the 805 ACC shares, which is annexed at Exhibit-A to the plaint. HSM is believed to have advised the plaintiff through his brother Ramesh that the sale would be effected at the best price possible, but he kept postponing the sale. Later, the gulf war having broken out, HSM contended that after the war, prices of steel and cement would rise and hence it was advisable that these shares are sold when the prices were more attractive. HSM thus held on to these shares. Eventually, the plaintiff called upon HSM through Ramesh to return these shares but the shares were not returned. The plaintiff then suspected that HSM was likely to transfer the shares to himself or his nominees and hence vide letter dated 14th March, 1991, annexed at Exhibit-C to the plaint, the plaintiff called upon his Advocates to inform defendant no.2-ACC that HSM was likely to misuse transfer forms in his possession and seek transfer of the suit shares to himself. ACC was instructed not to honour any such requests. By a second letter of the same date, HSM was called upon to cease and desist from using the blank transfer forms entrusted to

him. The plaintiff valued the shares as on date of the suit i.e. 16th March 1991 at Rs.17,91,125/- and since HSM was holding on to the shares contrary to the plaintiff's instructions, the suit came to be filed seeking the aforesaid decree and injunction restraining defendant no.2-ACC from honouring the transfer and restraining the defendant no.1-HSM and subsequently his heirs viz. defendant nos.1A to 1C and 4 from transferring the suit shares. Two other similar Suits have been filed by other family members of the plaintiff.

3. In the meanwhile, it seems that 805 shares of ACC had already been transferred to defendant no.4-Sudhir Mehta. The plaintiff claims he was unaware of this till receipt of a letter dated 5th September 2011 from the defendant no.2-ACC informing the plaintiff's Advocate that ACC shares were transferred to the name of defendant no.4-Sudhir on 31st December 1992. Later, the plaintiff came to learn from the defendant no.3-Custodian that these were attached shares pursuant to defendant no.1-HSM being notified. The plaintiff has since, by amending the plaint, contended that in the event 805 ACC shares had been sold by the Custodian, the sale proceeds and interest accrued thereon and all accretions by way of dividend, rights issue, bonus shares etc. be paid over to him. It is with this set of prayers that the suit has gone to trial.

4. Original defendant-HSM did not file a written statement. Defendant nos.1A to 1C have since filed a common written statement. Defendant no.3-

Custodian has also filed an additional written statement. Defendant no.4 did not file a written statement. It is therefore appropriate that we consider the defence before dealing with the issues. The legal heirs viz. defendant nos.1A to 1C have in their joint written statement contended that the suit is bad for non-joinder of necessary parties and mis-joinder of parties. Defendant no.1A claims to be the sole heir of original defendant no.1-HSM; the others are not. Therefore defendant nos.1B and 1C, viz. mother and son of defendant no.1, respectively, have not claimed any interest in the estate of HSM. It is contended that the case in the plaint is dishonest. The plaintiff is the son of one Ghanshyamdas Biyani, a leading broker and speculator in the stock market. Ramesh is the son of Ghanshyamdas and the brother of the plaintiff. Ghanshyamdas had entered into transactions through his nephew Vinod Biyani, who was also member of the Bombay Stock Exchange (*BSE*). At the material time, Ghanshyamdas was facing acute financial stringency and had sought the help of defendant no.1-HSM and his brother Ashwin. This fact has not been disclosed in the plaint. HSM, his brother Ashwin and present defendant no.1A-Jyoti H. Mehta all had proprietary stock broking firms by name M/s. Harshad Mehta, M/s. Ashwin Mehta and M/s. J.H. Mehta. The plaintiff had not entered into any transaction with these three persons or their firms and the plaintiff, belonging to a family of stock brokers, knew this very well.

5. According to defendant no.1A, shares of ACC held by the plaintiff were dealt with by M/s. Ashwin Mehta, M/s. Harshad Mehta and Vinod Biyani. Ghanshyamdas having sought financial assistance from defendant no.1-HSM and his brother Ashwin, had effected sale of the suit shares through Vinod, which was purchased by Ashwin Mehta from Vinod. The quantities are alleged to be far higher than what has been disclosed in the plaint. It is contended that accounts of the three brokerage firms, as aforesaid, have been drawn up pursuant to orders of this court, which disclosed that there were transactions between HSM and Ashwin Mehta on one hand with Vinod Biyani on a client-to-client basis. The sale proceeds and consideration for purchase of ACC shares had been paid for, the remittances were made to Vinod. Consideration for purchase of the shares was thus paid and no injunction was required to be granted. The written statement goes on to state that defendant no.1 having expired, Ramesh was a necessary and proper party and the suit cannot be decided without Ramesh especially since the suit is based on the Memo No.310 dated 20th December 1990, annexed at Exhibit A to the plaint. It is contended that Ramesh is required to be impleaded in the suit since several of these transactions were to his knowledge and he alone could reveal the facts and that the plaintiff has not come with clean hands. The written statement contains a para-wise denial of the plaintiff's claim on the aforesaid basis. Defendant no.1A therefore contends that the suit shares were purchased by the brokerage firm and consideration

was paid by way of arrangement entered into at the instance of Ghanshyamdas. It is therefore submitted that the plaintiff has no case and the suit is liable to be dismissed.

6. In the written statement filed on behalf of the 2nd defendant-ACC, it is contended that ACC is unable to make any submissions relating to the ad-interim injunction granted on 20th March 1991 since according to the company, there are no records to indicate that the copy of the order was ever served upon it at the ad-interim stage. It is only copies of the orders dated 23rd November 1993 and 3rd December 1993, which were brought to its notice and from those orders, it is evident that the ACC was not represented. Thus, it appears that the ad-interim order was probably not served on the ACC and in the meanwhile, on 31st December 1992, the suit shares came to be transferred to defendant no.4-Sudhir Mehta, who was declared as notified party on 8th June, 1992.

7. The suit, as we have seen, was filed on 16th March 1991. It is contended that this court would have no jurisdiction since the suit was filed in High Court and was transferred to this court only in 2013. Meanwhile, defendant no.4 was notified under Special Courts [Trial of Offences Relating to Transactions in Securities] Act, 1992 on 8th June 1992 and all his properties stood attached as part of the HSM Mehta Group.

8. The plaintiff filed Notice of Motion No.692 of 1991 after filing the suit and obtained an ad-interim injunction only on 3rd December 1993 in terms of prayer clauses (a), (b) and (c) of the motion. On 20th March 1991, the ad-interim order was passed and later the notice of motion was made absolute on 23rd November 1993 and 3rd December 1993. The defendant no.2-ACC could not be represented on that day since they had no records, but it is their contention that the suit shares had already been transferred to defendant no.4-Sudhir Mehta on 31st December 1992. In 1999, ACC subdivided equity shares of Rs.100/- each into 10 shares of the face value of Rs.10/- each. As a result, in the case of defendant no.2-ACC, 805 shares translated into 8,050 shares under Folio No.S-33216 bearing distinctive nos.46512071/20120. ACC then deposited these 8,050 shares with the Custodian. A grievance is made that though the suit shares were reportedly dematerialized on 14th September 2001, for 20 years, the plaintiff did not take any action despite knowing that defendant nos.1A to 1C and 4 were notified parties. It is only on 2nd May 2011 that the plaintiff's present Advocate enquired about the shares and requested ACC to inform him of the present status of the shares, which ACC did. It is on 21st November 2011 that the plaintiff's Advocate informed ACC of this suit and the ad-interim injunction dated 20th March, 1991.

9. ACC also informed that the suit shares were transferred to defendant no.4

on 31st December 1992 under Folio No.S-38028. The transfer pre-dated passing of the injunction order. Later, it transpired that a representative of ACC visited the Custodian's office on 17th January 2012 and briefed the Custodian of these developments. ACC then set out all facts in a letter dated 5th February 2012, annexing therewith copies of share transfer forms, share certificates and dematerialization request forms. The Custodian informed ACC that the shares will be attached assets. Since the ad-interim order dated 20th March, 1991 was probably not served on the ACC as also the order dated 8th June 1992 notifying the HSM and all his family members not served upon ACC at the relevant time, the suit shares came to be transferred in the meanwhile to defendant no.4- Sudhir Mehta being a notified party. Thus, ACC has contended that it is not bound by the injunction since the shares had already been transferred on 31st December 1992 in normal course and there was no occasion to refuse transfer in view of Section 22A of the Securities Contracts (Regulation) Act, 1956. Defendant no.2-ACC has thus sought dismissal of the suit against it since the suit discloses no cause of action.

10. In his written statement dated 13th July 2016, the Custodian has confirmed that the suit came to be filed in the Bombay High Court and was transferred to this court only in 2013. The suit shares were part of unregistered shares belonging to various group members of late Harshad S. Mehta and

received from the Income Tax Authorities. The Custodian was not party to the suit when it was pending before the High Court. Later, the Custodian, by filing Miscellaneous Application No.309 of 1997, sought directions from the Special Court pertaining to transfer of unregistered shares belonging to various entities of Harshad Mehta group. This application was allowed.

11. The Custodian has filed an additional written statement dated 10th March 2021, in which the Custodian states that the suit shares had already been transferred to defendant no.4-Sudhir Mehta on 31st December 1992. The 805 shares of the face value of Rs.100/- each have been sub-divided into 8,050 shares of the face value of Rs.10/- each. On the basis of 805 shares, 80 rights shares were issued in 1995 based on a ratio of 1:10. Thereafter, in 1996, bonus shares were issued in the ratio of 3:5, leaving to a total of 1,416 shares. These were sub-divided into shares of the face value of Rs.10/- each, resulting in 14,160 shares. Subsequent to further rights issue in 1999 in the ratio of 1:4, an additional 3,540 shares were issued. Thus, as against the original 805 shares, a total of 17,700 shares came to be held in the name of defendant no.4. These were sold on 13th October 2003 @ Rs.170/- per share. The Custodian has relied upon demat account statement of defendant no.4, which shows the sale of these shares as also delivery instruction slips and bank statement disclosing receipt of sale proceeds. According to the Custodian, the value realized towards 17,700

shares is Rs.30,09,000/-. This amount stands credited to the attached account of defendant no.4 and is believed to be invested.

12. In the additional written statement, the Custodian seeks to supplement its original written statement by setting out certain facts, which had inadvertently been omitted. It reveals that ACC had intimated the Custodian in February, 2012 about the query of the plaintiff and the Custodian, in response, had requested the ACC to refrain from taking action on the 805 shares since defendant no.4 was a notified party. These 805 shares of Rs.100/- face value were converted to 8,050 shares of Rs.10/- face value. Thereafter the Custodian wrote to ACC to clarify the position, in response to which the Custodian has been informed that, on accruals, 8,050 base shares of ACC are registered in the name of defendant no.4-Sudhir Mehta, as described below :-

Base Shares	805
Rights – 1995 (1 : 10)	80
Bonus – 1996 (3 : 5)	531
Total	1,416
Equivalent Subdivided Shares	14,160
Rights – 1999 (1 : 4)	3,540
Total Shares	17,700

13. Defendant no.4-Sudhir Mehta the transferee of the suit shares is the brother of Ashwin Mehta, one of the heirs of late Rasila S. Mehta. Defendant

no.4 has not contested the suit. No written statement has been filed and no submissions have been made by Mr. Vivek Sharma, who appears for him. In effect, he has submitted to the orders of the court. It is in this background that we have to consider the issues.

14. The following issues were framed on 12th January 2018 :-

1. *Whether the 805 shares of ACC Limited were handed over for sale to one Mr. Ramesh Biyani in his capacity as agent/broker for the plaintiff, who, in turn, entrusted these shares of ACC Ltd. to original defendant no.1 ?*
2. *Whether original defendant no.1 handed over to the said Mr.Ramesh Biyani an acknowledgment of shares for sale and delivery, as set out in paragraph 5 of the plaint ?*
3. *Whether the suit is bad for non-joinder of Mr. Vinod Biyani and Mr. Ramesh Biyani ?*
4. *Whether Mr. Harshad S. Mehta and/or Mr. Ashwin S. Mehta had paid consideration for the suit shares of ACC Ltd. to Mr. Vinod Biyani on behalf of the plaintiff, as contended in paragraph 9 of the written statement of defendant nos.1A to 1C?*

5. *Whether the suit shares were handed over to the original defendant no.1 against any purchases made by defendant no.1, as contended in paragraph 18 of the written statement of defendant no.1A ?*
6. *Whether plaintiff is the owner of suit shares ?*
7. *If answer to issue number 6 is in the affirmative, whether original defendant no.1 held and presently defendant nos. 1A to 1C hold the suit shares in trust for the plaintiff and are in wrongful possession of the said shares ?*
- ¹*8. *If answer to issue no.6 is in the affirmative, whether the plaintiff is entitled to receive dividend on the suit shares and all accretions thereto and if so, from whom ?*
9. *What order ? What reliefs?*

15. Shrikant Biyani – the plaintiff has deposed by filing his affidavit-of-evidence dated 6th March 2018. He has stated that on 20th December 1990, he had delivered 805 shares of defendant no.2-ACC Ltd. to his brother Ramesh Ghanshyamdas Biyani along with the signed transfer deeds with the intention of selling suit shares in the market. Ramesh Biyani was said to be dealing in the market and familiar with stock exchange brokers. Vide a delivery memo bearing

¹*Issue No.8 corrected on 11th June, 2021 along with other two Suits viz. Suit No.1 of 2013 and Suit No.2 of 2013.

no.310 dated 20th December 1990, Ramesh Biyani is believed to have delivered 805 shares of ACC to original defendant no.1-Harshad S. Mehta (*HSM*). The plaintiff has deposed that the shares stood to his name and that his brother – Ramesh obtained an acknowledgment of defendant no.1’s proprietary concern – M/s. Harshad Metha, who acknowledged receipt of the same by affixing a rubber-stamp. The plaintiff has further deposed that Ramesh informed him that he had instructed HSM to sell the shares in the stock market within a week or two, but HSM did not do so. The plaintiff was advised through Ramesh that upon the gulf war ending, prices of ACC shares would rise considerably and therefore the plaintiff should wait till the war ends. The plaintiff had insisted through Ramesh that HSM disposes the suit shares, but the HSM did not. Since the suit shares were not sold, the plaintiff asked for return of the shares and the transfer forms, but HSM did not return the shares. After repeated demands, the plaintiff learnt that HSM was planning to get the suit shares transferred to himself or his nominees and demand notice dated 14th March 1991 was sent through his lawyer to the defendant no.2-ACC requesting them not to transfer the suit shares. A notice of the same date was also issued to defendant no.1-HSM asking for return of the suit shares and transfer deeds. The witness has tendered the office-copies of the aforesaid demand notices, which are marked in evidence as Exhibits P-2 and P-3. The plaintiff’s Advocate also sent a telegram to the original defendant no.1-HSM, despite which HSM did not return the suit shares.

Thereafter the Suit was filed and ad-interim reliefs were granted on 20st March 1991. HSM however remained absent.

16. Later, on 21st March 1991, the plaintiff's Advocates informed defendant no.1-HSM and defendant no.2-ACC of the ad-interim order passed. The plaintiff has thereafter stated that his father Ghanshyamdas Biyani ceased to be a stock broker since 1988. He was expelled from the stock exchange effective from 11th August, 1988 and that his father had no connection with the suit shares, which were entrusted to the HSM. The witness has denied that the suit shares were handed over to HSM for alleged indebtedness of his father and that any consideration had been paid by HSM. He has denied that the suit shares were sold and he has disclaimed knowledge of any transaction between HSM and Vinod Biyani. The plaintiff has further stated that upon enquiries being made by his Advocate, the defendant no.2-ACC stated that 805 shares standing in the name of the plaintiff under Folio No.S-33216 had been transferred to defendant no.4-Sudhir Mehta on 31st December 1992. He relies upon the original letter dated 5th September 2011 addressed by defendant no.2-ACC Ltd in this behalf. The plaintiff claims to be the owner of the suit shares, which are reflected in his balance sheets for the financial years 1989-90 and 1990-91 and thereafter from year to year. Copies of the balance sheets are produced in evidence and marked as Exhibits P-7(1) and P-7(2). The plaintiff claims that it is

much later that he learnt that HSM was notified and the Custodian had taken possession of large number of shares of various companies including the suit shares. The Custodian has sold these shares, but the plaintiff was not a party to the proceedings and hence unaware of the same. According to the plaintiff, defendant no.3-the Custodian has vide letter dated 30th March 2012 informed the plaintiff's Advocate that the suit shares were dematerialized on 11th September 2001 and were subsequently sold under orders of this court. The plaintiff has then deposed that he is entitled to all accruals on the suit shares viz. dividends, right issues, bonus issues etc. till the date of sale and is also entitled to sale proceeds realized by the Custodian upon sale of the suit shares along with interest thereon, assuming that the money was kept by the Custodian in a nationalized bank in a fixed deposit.

17. The plaintiff was further examined on 23rd March 2018, when letters dated 14th March 1991, addressed to defendant no.1-HSM and defendant no.2-ACC, along with annexures thereto, were ordered to be read in evidence and marked as Exhibits P-2, P-2(1), P-2(2), P-3 and P-3(1), respectively, in this Suit. Two telegram receipts and certified true copy of the telegram dated 15th March 1991 and 16th March 1991 were marked in evidence as Exhibits P-5(1), P-5(2) and P-5(3) in this Suit and in Suit No.1 of 2013. The plaintiff also deposed to issuance of his Advocate's letter to HSM dated 15th March 1991 and the

acknowledgment dated 18th March 1991, which was marked in evidence as Exhibit P-4. He further deposed to having instructed his Advocate to address a letter to HSM, which was marked as Exhibit P-5. Certain other documents were also admitted in evidence, as set out in the tabulated form and marked as Exhibits P-7(1), P-7(2), P-8, P-9 and P-10. The document at Exhibit P-10 is a copy of the letter dated 26th February 2018 addressed by Mr. Ramesh Biyani to the Bombay Stock Exchange seeking copy of the letter dated 8th January 1993, which is also marked as Exhibit P-14 in Suit No.1 of 2013.

18. The cross-examination of the plaintiff on behalf of defendant nos.1A to 1C and 4 commenced on 3rd May 2018. He admitted that he was not present when Share Delivery Memo No.310 dated 20th December 1990, marked in evidence as Exhibit P-12, was prepared. He has also identified portions of the evidence, which were to his knowledge. In support of his claim to ownership, the plaintiff has relied upon a letter dated 5th September 2011, marked in evidence as Exhibit P-8, which was written by the defendant no.2-ACC to his Advocate. The plaintiff has denied that the suit shares were handed over to HSM in relation to a transaction between HSM and Vinod Biyani. HSM was not returning the shares and as a result, the disputes arose between HSM and Ramesh Biyani. He reiterated these statements as being true and correct. He admitted that Vinod Biyani was his cousin, but he had not engaged in any share

trading through Vinod Biyani. He reiterated the contents of Exhibits P-7(1) and P-7(2), being balance sheets for the period 1989-90 and 1990-91, as those certified by his Accountants and therefore correct. The witness was called upon to produce books of accounts covered by Exhibits P-7(1) and P-7(2), which he admits he could not produce because the Accountant did not have the records. The plaintiff denied the suggestion that he had handed over physical custody of the suit shares along with the blank signed transfer forms by way of sale and that he ceased to be the owner of the suit shares. He deposed that since there was no sale and he had not received consideration, the suit shares are required to be returned to him. Thus, he stood by the case in the plaint.

19. In cross-examination on behalf of defendant no.2-ACC, the witness deposed that he was unaware when he had received dividend of the suit shares last. To a pointed question whether any action was taken against the defendants 1A to 1C for transfer of suit shares despite the injunction, the witness answered in the negative and stated that since the suit was pending and injunction was operating, no other action was taken. The witness was then discharged since the Custodian did not cross-examine him.

20. Ramesh Biyani (*Ramesh*) was then examined. He was a stock and share broker. The affidavit-of-evidence of Ramesh Biyani, the brother of the plaintiff

dated 6th March, 2018, is also on record (Exhibit P-11). Ramesh Biyani was examined on oath in the suit on 13th April 2018, when he affirmed the contents of his affidavit in lieu of examination-in-chief dated 6th March 2018. A minor correction was also allowed in paragraph (2) of the affidavit. He has affirmed the fact that family members including the plaintiff, being desirous of disposing the suit shares through him, the plaintiff had delivered suit shares along with the signed transfer forms, which Ramesh entrusted with defendant no.1-HSM. HSM had promised to sell the suit shares after the ending of gulf war, but he failed to do so. He also failed to return the suit shares to the plaintiff. The deponent states that he had asked for return of the shares, but HSM did not reply. It is after that, that a demand notice was sent on 14th March, 1991. He has also deposed to the fact that his father Ghanshyamdas Biyani ceased to be a broker in stock exchange from 11th August 1988, a copy of the letter dated 10th August 1988 recording his expulsion was produced in evidence and marked as Article X-2 in Suit No.2 of 2013. HSM was called upon to return the suit shares and transfer deeds, which he failed to do. In-spite of the legal notice dated 14th March 1991 (Exhibit P-2), HSM did not return the suit shares and hence the suit came to be filed. He has also deposed that he became a member of the stock exchange in 1990, but was allowed to trade from 8th January 1993. He had requested the stock exchange to issue certified copy of the letter dated 8th January 1993, which was not traceable in his records. He has also deposed that

no contract note was issued. He entered into various transactions in shares and stocks on behalf of his family members including the plaintiff, who is his brother.

21. On 20th April 2018, the BSE Ltd. deputed one Hemant V. Dharap, who responded to the summons and stated that he was not aware of the letter dated 10th August 1988, which was marked as X-2 for identification in Suit No.1 of 2013, issued by the BSE, which is related to the expulsion of Ghanshyamdas Biyani. He was examined on behalf of the plaintiff and called upon to identify the letter at Exhibit P-14, to which the witness responded by stating that the Membership Department of the BSE would be aware of the same. Thereupon, the summons was once again issued to the BSE Ltd. and on 12th July 2018, one Johnson Joseph Chiriyath answered the witness summons dated 3rd July 2018. Upon being given some time, on 2nd August, 2018, he produced a photocopy of a writing dated 7th January 1993 bearing reference no.151/93, whereby members of the stock exchange were informed that Ramesh Biyani would commence business in the market in his own name with effect from 8th January 1993. Ramesh Biyani had been given clearing no.768. The witness confirmed that such a letter had been issued. In view thereof, the copy of the said letter Article X-2 was marked as Exhibit P-17 in Suit No.1 of 2013. Since evidence has been led in common, the deposition of Johnson Joseph Chiriyath would also be read in other

suits as well since it pertains to a document which is common in all the three Suits.

22. Both plaintiff and defendants 1A to 1C have filed affidavits-of-documents and compilations. The said defendants have not proved any of the documents disclosed by them. None of those were in original. No attempt was made to lead secondary evidence. The plaintiff's documents have been marked. Some are in common with those disclosed in other two Suits. Documents were marked in evidence during examination of the witnesses in this Suit and some in Suit No.1 of 2013. The description of the documents marked to be read in evidence can be conveniently set out in the following table.

Documents marked during examination and cross-examination of the Plaintiff		
<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Affidavit in lieu of examination-in-chief of the plaintiff – Shrikant Ghanshyamdas Biyani.	6 th March, 2018	P-1
Original letter addressed by plaintiff's Advocate Mr. Ramesh Shah to the defendant no.1-HSM.	14 th March 1991	P-2
Annexure to aforesaid letter dated 14 th March 1991 addressed to HSM giving details of 805 shares of ACC held by the plaintiff under Folio No.833216.	14 th March 1991	P-2(1)

<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Original acknowledgment to the aforesaid letter dated 14 th March 1991.	15 th March 1991	P-2(2)
Original letter addressed by plaintiff's Advocate Ramesh Shah to defendant no.2-ACC Ltd.	14 th March 1991	P-3
Annexure to aforesaid letter dated 14 th March 1991 addressed to ACC Ltd. giving details of 805 shares of ACC held by the plaintiff under Folio No.833216.	14 th March 1991	P-3(1)
Original letter addressed by plaintiff's Advocate Ramesh Shah to defendant no.1-HSM.	15 th March 1991	P-4
Original letter addressed by plaintiff's Advocate Ramesh Shah to defendant no.1-HSM.	21 st March 1991	P-5
Original Receipt No.022 issued by Department of Telecommunications in the name of Mr.Ramesh C. Shah, Advocate for the plaintiff, towards charges for certified true copy of the telegram dated 15 th March 1991.	16 th March 1991	² *P-5(1)
Original Certified True Copy of the Inland Telegram sent by Mr. Ramesh Shah, Advocate for the plaintiff, to defendant no.1-HSM.	15 th March 1991	*P-5(2)
Original receipt for inland telegram sent to HSM and received by Mr. Ramesh Shah, Advocate for the plaintiff.	15 th March 1991	*P-5(3)
Original letter addressed by plaintiff's Advocate Ramesh Shah to defendant no.2-ACC.	21 st March 1991	P-6
Balance Sheet and Profit & Loss Account of Shrikant Biyani for Assessment Year 1990-91.	31 st March 1990	P-7(1)

² *These three documents have already been marked as exhibits in Suit No.1 of 2013.

<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Balance Sheet and Profit & Loss Account of Shrikant Biyani for Assessment Year 1991-92.	31 st March 1991	P-7(2)
Original letter addressed by defendant no.2-ACC to Mr. D.P. Guchiya, Advocate for the plaintiff.	5 th September 2011	P-8
Copy of the letter addressed by the Custodian's Office to Mr. D.P. Guchiya, Advocate for the plaintiff.	30 th March 2012	P-9
Copy of the letter addressed by Mr. Ramesh Biyani to the Executive Director, Bombay Stock Exchange.	26 th February 2018	³ *P-10
Affidavit in lieu of examination-in-chief of Mr. Ramesh Biyani.	6 th March 2018	P-11
Share Delivery Memo No.310 issued by Mr. Ramesh Biyani in respect of 805 shares of ACC Ltd.	20 th December 1990	P-12

Documents marked during examination and cross-examination of the Defendants		
<i>Description of the Documents</i>	<i>Date of the Document</i>	<i>Exhibit Nos.</i>
Affidavit in lieu of examination-in-chief of Mr. Ashwin Mehta.	27 th October 2018	D-1/1

23. I will now consider issue nos.1 to 3, which can be conveniently considered together.

³ *This document is also marked as Exhibit P-14 in Suit No.1 of 2013.

Issue No.1 : Whether the 805 shares of ACC Ltd. were handed over for sale to one Mr. Ramesh Biyani in his capacity as agent/broker for the plaintiff, who, in turn, entrusted these shares of ACC Ltd. to original defendant no.1 ?

and

Issue No.2 : Whether original defendant no.1 handed over to the said Mr.Ramesh Biyani an acknowledgment of shares for sale and delivery, as set out in paragraph 5 of the plaint ?

and

Issue No.3 : Whether the suit is bad for non-joinder of Mr. Vinod Biyani and Mr. Ramesh Biyani ?

24. The plaintiff was examined-in-chief on 23rd March 2018. The plaintiff has produced balance sheets for the years 1989-90 and 1990-91, which were duly certified by the Chartered Accountant and marked in evidence as Exhibits P-7(1) and P-7(2). The plaintiff was cross-examined by Mr. Satish Shah, learned counsel on behalf of defendant no.2-ACC, when the witness confirmed that his father and the Chartered Accountant - M/s. S.K. Rathi & Co. were looking after financial matters during the period 1991-92, including filing of income tax returns. Incidentally, these are the accounts which were certified balance sheets. The cross examination of the plaintiff has not disturbed the plaintiffs assertions in his depositions. Plaintiff has deposed to delivery of these shares by Ramesh to

defendant no.1. He has produced Share Delivery Memo No.310 dated 20th December 1990 bearing acknowledgment of the defendant no.1-HSM with brokerage firm's seal and clearing number. The witness has deposed to the fact that these shares were handed over to HSM for sale, which HSM did not execute on the pretext that upon cessation of the gulf war, higher prices would be obtained. The plaintiff has requested for return of these shares. The witness has deposed to the fact that upon failure to sell the shares and failure to return the shares, legal notices were issued. Office copy of the legal notice dated 14th March 1991 has been marked in evidence as Exhibit P-2. Acknowledgement for legal notice signed on behalf of HSM is marked as Exhibit P-2(2).

25. The witness confirmed that Ghanshyamdas did handle the transactions in this suit. Ghanshyamdas expired in 2002. After his demise, his brother Ramesh has been handling these matters. The plaintiff was thereafter cross-examined on 3rd May 2018 by Mr. Vivek Sharma on behalf of defendant nos.1A to 1C and 4, when he deposed to the contents of his affidavit dated 6th March 2018 and one letter dated 15th March 1991 addressed by the plaintiff's Advocate to HSM (Exhibit P-4) and two letters dated 21st March 1991 addressed by the plaintiff's Advocate to HSM and ACC (Exhibits P-5 and P-6). He has identified various documents, as described in the aforesaid tables, which have been marked to be read in evidence and are thus on record.

26. The witness–Shrikant has identified carbon–copy being counter–part of the letter dated 21st March 1991 addressed by the plaintiff’s Advocate to ACC Ltd., which is marked as Exhibit P–6 above. The witness has deposed to the correspondence exchanged between the plaintiff’s Advocate and ACC Ltd. which is described above. The witness had no explanation for the delay in amending the plaint after defendant no.1 died in 2001. Advocate Ramesh Shah ceased to represent the plaintiff in the suit since 2005; he however confirmed having instructed the Advocates on record for the plaintiff at the material time to file the suit. The witness confirms that in 1990–92, his brother Ramesh was looking after the investments and stock market dealings for members of the family. Ramesh became a member of the Bombay Stock Exchange in 1990, but he could trade only from 8th January 1993, having requested the Stock Exchange for a confirmation of his authorization to trade. He relies upon a certified copy of the letter dated 8th January 1993 issued by the BSE since the original was not traceable. He has deposed that although the suit shares were delivered by him personally and in original to defendant no.1–HSM, those shares have not been sold to HSM. No contract note for purchase by HSM was issued. No payment was received by the deponent or the plaintiff.

27. The plaintiff has also led evidence of Ramesh Biyani, his brother, who has deposed that the transactions in relation to the suit shares were carried out by him on behalf of his brother – the plaintiff. Ramesh Biyani has deposed to the correctness of the narration of facts pertaining to handing over of suit shares to defendant no.1, failure to sale the shares and reluctance of defendant no.1 in returning the suit shares. He has deposed to issuance of the legal notice dated 14th March 1991 to defendant no.1-HSM, marked in evidence as Exhibit P-2. All legal proceedings were looked after by him. He has affirmed that on 20th December 1990, he had delivered 805 shares of ACC to Ramesh along with the signed transfer deeds on behalf of the plaintiff. Ramesh is believed to have delivered these shares to defendant no.1-HSM under Memo Nos.310 dated 20th December 1990, which is marked as Exhibit P-12. I may observe Ramesh Biyani was also extensively cross-examined in Suit No. 2 of 2013 on behalf of defendant nos.1A to 1C and 4. That cross-examination was common to all three suits [*See orders dated 27th April, 2018 in Suit No. 2 of 2013 and Order dated 22nd June, 2018 in Suit No. 3 of 2013*]. Ramesh was also dealing with the suit shares. Vinod Biyani was identified as his cousin, who was a share broker, but the witness was unaware whether Vinod was registered as a share broker in 1990. He had not dealt with Vinod Biyani in relation to the investment in shares. He re-affirmed his deposition in the affidavit that he has delivered the suit shares to Ramesh. In answer to question no.21 in Suit No.2 of 2013, the witness

confirmed that all transactions in the suit have been carried out on behalf of the plaintiff only by his brother Ramesh although he reiterated the contents of his affidavit that Ramesh was personally aware of these transactions.

28. Ramesh Biyani was cross-examined by Mr. Vivek Sharma, learned counsel on behalf of defendants 1A to 1C and 4 on 13th April 2018, which was concluded on 20th April 2018. The cross examination was common across all three suits. In addition to the documents marked above, he identified copies of the balance sheet and profit & loss account maintained in respect of his brother's account. These were therefore marked in evidence as Exhibits P-7(1) and P-7(2). The witness confirmed that the balance sheet and profit & loss account were prepared by M/s. S.K. Rathi & Co. The witness confirms that after 1991, he continued to trade in shares.

29. In further cross-examination, the witness-Ramesh admitted that during 1990-91, settlements were arrived at every 15 days and delivery of shares would have to effect on expiry of 15 days. The witness confirmed that upon sale of shares, delivery memos would have to be issued and that would depend on the relationship between the client and the broker. The witness had been meeting HSM – original defendant no.1 since 1986 off and on. He could not recall whether in 1990 he had met defendant no.1 or issued any contract note,

but in 1986, there were occasions where defendant no.1 had bought and/or sold shares to the witness and Biyani family members.

30. In answer to question no.29 in the cross-examination of the plaintiff in Suit No.2 of 2013, who was mother of the witness-Shrikant, confirmed that the shares need not be delivered prior to sale. The question no.29 and answer thereto are reproduced below for ease of reference.

“Q.29. Would it be correct to say that since no sale was effected it was not necessary to deliver the shares in advance ?

A. Yes that is correct. In the case of shares covered by share memo no. 301 I had asked Mr. Harshad S Mehta to sell of these shares. however he advised me against selling it at that point of time and suggested that if I had waited these shares would fetch a better price because of the oil crisis then prevalent.”

31. The witness-Ramesh has thus reiterated his case that the shares covered under Share Delivery Memo No.310 dated 20th December 1990 (Exhibit P-12) had not been sold for the reasons set out. The witness was unaware whether the price of the suit shares increased or decreased between 18th December 1990 to 31st December 1990. In further cross-examination, the witness has deposed that the suit shares were handed over to defendant no.1-HSM in advance. If these

shares were sold, HSM would have received brokerage and nothing more, but the shares had been handed over in advance due to the relationship between the parties. Upon being asked, the witness was unaware at which office of the defendant no.1 the suit shares had been delivered. He did remember that there were 139 transfer deeds, but was not sure of the number of share certificates. The witness confirmed that copies of the transfer deeds and/or share certificates are not in his possession. He deposed to having personally enquired with HSM as to why suit shares have not been sold, although nothing was recorded in writing. He had also orally asked HSM to return those shares. He fairly admitted that issuance of legal notices through Advocate Ramesh Shah was initiated by his brother Shrikant and not by him. The witness deposed that he knew HSM at least for five years, was aware of his address at Cama Building and has provided the same to the plaintiff-Shrikant, who had corresponded with HSM at the said address. He had provided the plaintiff with all the addresses of HSM, but became aware of HSM's Maker Chambers address only after the suit was filed.

32. As far as the first issue is concerned, the fact that 805 shares of ACC were handed over to Ramesh Biyani, who, in turn, entrusted these shares to defendant no.1-HSM cannot be seriously disputed. The above evidence of the plaintiff in no uncertain terms establishes that these shares were standing in the name of the plaintiff and were handed over to Ramesh Biyani. Dealings between HSM

and Ramesh are admitted in evidence on behalf of HSM. The affidavit-of-evidence of Mr. Ashwin Mehta in paragraph 12 admits dealings only with Ramesh, but not with the plaintiff individually. Thus, read with Share Delivery Memo No.310 dated 20th December 1990 (Exhibit P-12), it bears the acknowledgment of proprietary concern of HSM. The counter-foil of the original memo bearing the acknowledgment with rubber-stamp of defendant no.1 along with the firm's code 241 affixed with its rubber-stamp at the bottom is evident. This counter-foil is from the original Share Delivery Memo Register bearing the same number and this can easily be verified from the document itself. If the shares were to be sold to HSM, there was no need for this memo to be executed, because only signed transfer forms would have been sufficient. Thus, to my mind, Issue no.1 stands proved beyond doubt and is answered in the affirmative.

33. Issue no.2 also stands proved from the fact that the acknowledgment in original is now attached to the letter dated 14th March 1991 addressed by the plaintiff's Advocate to defendant no.1-HSM (Exhibits P-2, P-2(1) and P-2(2) respectively). The fact that the shares were received by HSM is also not disputed in the evidence of Ashwin Mehta, who claims that the suit shares were purchased by HSM in relation to the alleged transaction between HSM and Ghanshyamdas Biyani acting through Vinod Biyani. The alleged purchase in my

view has not been established. Evidence of Vinod Biyani is of no assistance at all to establish the defendant's case, nor has defendant nos.1A to 1C been able to establish this transaction of purchase from the plaintiff as part of the transaction with Ghanshyamdas Biyani. It is apposite to mention that defendants' witness admits that HSM has not met the plaintiff and had no direct dealings with the plaintiff. Purchase of these suit shares have clearly not been established. If purchase is not established, read with the fact that the suit shares were handed over to him along with the memos, there is no reason to disbelieve the plaintiff's evidence and that of Ramesh Biyani and effectively the case in the plaint. Since HSM did not file a written statement, none of these statements in the plaint have been controverted by HSM at the material time. Issue no.2 is therefore answered in the affirmative.

34. I shall now deal with Issue no.3 as to whether the suit is bad for non-joinder of Vinod Biyani and Ramesh Biyani. In my view, the answer must be in the negative since it is the plaintiff's case that the suit shares were entrusted to HSM through Ramesh. Ramesh has deposed in support of the plaintiff's case and has been cross-examined extensively. The witness-Ramesh denied that the suit shares had any connection with the transactions of Vinod Biyani because if they did, Vinod Biyani's Share Delivery Memos would have been issued and not the suit memos issued by the witness. Ramesh Biyani deposed that the plaintiff had

never engaged in delivering shares since he did not even know HSM and that is the reason why has the witness-Ramesh was in contact with HSM. The plaintiff did not maintain a share delivery memo book since all transactions were carried out through the deponent. Till 1993, the witness-Ramesh had not issued contract notes since he was not a broker, who could trade on the exchange, at that time and till 1993. However, the delivery books were maintained for the records in order to enable him to instruct share brokers and specify which shares would have to be sold under different names. He has identified the column in Exhibit P-12, in which the shares were to be sold is mentioned. When queried as to when his father Ghanshyamdas was a broker of the exchange, the witness could not remember but he did confirm that he had started independent dealings in 1986. His father was meanwhile expelled due to trading beyond permissible limits and despite certain letters of warning issued to him. He denied having engaged in Vyaj Badla transactions.

35. Ramesh Biyani had also denied that the suit transactions were relating to trades between defendant no.1-HSM and Vinod Biyani. He re-affirmed that Vinod Biyani had no connection with the suit transactions, nor did Vinod Biyani received any consideration for the suit shares from HSM. He denied a suggestion that the suit should have been filed against Vinod Biyani because HSM had paid monies to Vinod Biyani. The witness could not recall any dealings with his

family members and Vinod Biyani. The witness was called upon to produce some books of accounts for the period 1st January 1990 to 31st March 1992 in respect of the transactions between the witness and various brokers, but these were not in his possession. He did however have balance sheet and profit and loss account for the aforesaid period. He was then called upon to produce the balance sheet and profit and loss account for the period 1st January 1990 to 31st March 1992, as also contract notes and ledger accounts in respect of the transactions between the witness and the said Vinod Biyani for the aforesaid period.

36. On 27th April 2018, the witness–Ramesh produced the balance sheet and profit and loss account for the said period. These were copies of the balance sheet and profit and loss account as of 31st March 1991 for assessment year 1991–92 and certified by M/s. S.K. Rathi & Co. It contained annexures comprising statement of total income, share investment account, debenture investment, statement of gains on sale of shares, details of dividend warrants and interest account. He did not however have copies of contract notes or ledger accounts in relation to the transactions with Vinod Biyani despite a search for such documents. The certified copies of balance sheet and profit & loss accounts were marked as Exhibits P-7(1) and P-7(2) and he admitted that while the other documents sought by the cross-examiner were not available, the certified copies

of the balance sheet and profit & loss account were sourced from the Chartered Accountants and were received on 23rd / 24th April 2018. He denied a suggestion that documents at Exhibits P-7(1) and P-7(2) were fabricated. When called upon to identify registration numbers of motor cars owned by him in 1991-92, the witness did not remember. Once again, the witness denied a suggestion that these were fabricated since it did not bear signatures of the Accountants, but deposed that the documents are sourced from the custody of the CAs, which is the reason why they were certified by the Accountants. He reiterated it is a statement pertaining to originals of these documents and in further cross-examination has stated that the Accountant had not retained supporting documents for preparing these balance sheets and profit & loss accounts. M/s. S.K. Rathi & Co. had been handling accounts from the inception of the witness' business and that of his father Ghanshyamdas. He reiterated that these are being certified at his request in the usual course.

37. The witness-Ramesh was also briefly cross-examined by Mr. Satish Shah on behalf of the 2nd defendant, during which he confirmed that the witness' father was advising the plaintiff and the witness was handling the plaintiff's accounts. His brothers Santosh and Shrikant had been consulting Advocate Ramesh Shah and he was aware that they have consulted other Advocates as well.

38. Non-joinder of Ramesh Biyani cannot non-suit the plaintiff. In fact, Ramesh Biyani admits having handed over the suit shares to defendant no.1-HSM. He was not a necessary party nor was Vinod Biyani. This becomes clear from the evidence on record and as dealt with in some detail in answer to Issue No.1. It is not the plaintiff's case that transactions between plaintiff and HSM were carried out through Vinod Biyani, Vinod Biyani is neither necessary nor proper party. Hence, there is no merit in the contention that Vinod Biyani and Ramesh Biyani were necessary and proper defendants. Vinod Biyani has been summoned as a witness for the defence and he has been examined and cross-examined, in respect of which I have already made my observations above. The plaintiff as dominus litus can decide on who should be impleaded as a party.

39. The suit as originally filed was filed as a High Court Suit and as provided under Order I Rule 3 of the CPC, all persons may be joined in one suit as defendants where any right to relief in respect arising out of a transaction or series of transactions is alleged to exist against such person jointly, severally or in the alternative and if separate suits were to be brought against such persons, a common question of law or fact would arise. In the present case, there are no claims or reliefs sought against Vinod Biyani or Ramesh Biyani and as such, they were not required to be joined as defendants. Even otherwise, this principle may be followed even in the Special Court Suits de hors the CPC. While it is true that

a defendant need not be interested in the relief claimed, in the present case, no relief is claimed either against Ramesh Biyani or Vinod Biyani and there can be no reason whatsoever for impleading them as defendants. Even otherwise, non-joinder will not defeat the suit since the court is required to deal with the suit and matters in controversy between the parties before it and non-joinder of either of these parties cannot affect the fate of the suit. As can be seen from the evidence discussed in the course of answering Issue No.1, it would be seen that Ramesh Biyani was examined and was cross-examined at length. Vinod Biyani was summoned by the defence and he has also deposed. They are neither necessary nor proper parties. Thus, issue no.3 is answered in the negative.

40. Issue nos.4 and 5 can be dealt with together.

Issue No.4 : Whether Mr. Harshad S. Mehta and/or Mr. Ashwin S. Mehta had paid consideration for the suit shares of ACC Ltd. to Mr. Vinod Biyani on behalf of the plaintiff, as contended in paragraph 9 of the written statement of defendant nos. 1A to 1C ?

and;

Issue No.5 : Whether the suit shares were handed over to the original defendant no.1 against any purchases made by defendant no.1, as contended in paragraph 18 of the written statement of defendant no.1A ?

41. On behalf of the defendant nos.1A to 1C, only defendant no.1A was contesting the suit, but the affidavit-of-evidence is filed by Ashwin S. Mehta, brother of original defendant no.1-HSM. Defendant no.1A, who is the only legal heir claiming to the estate of HSM, has not led any evidence. I may mention here that she is the proprietor of M/s. J.H. Mehta, Stock Brokers. In his deposition dated 27th October, 2018, the deponent-Ashwin Mehta has deposed to three proprietary brokerage firms being in existence, which I have named above. The original defendant no.1- HSM was a member of the BSE. The deponent has acted as his sub-broker and badge holder in the brokerage firm of M/s. Harshad S. Mehta. In the year 1999, Ghanshyamdas Biyani was a leading speculator and had undertaken speculative trades in the shares of ACC. Ghanshyamdas had a good relationship with HSM, but never had any client-broker relationship with M/s. Mehtas' firms. According to the deponent, during 1990, Ghanshyamdas ran into financial difficulties, wanted funds and in the presence of the deponent, Ghanshyamdas requested HSM for financial assistance. Ghanshyamdas was willing to sell shares of ACC on spot basis and also through the brokerage firm of M/s. Vinod Biyani. In order to provide financial assistance to Biyani, (presumably Ghanshyamdas), *"they agreed between themselves"* that HSM would purchase ACC shares standing in the name of Biyani family members

42. Evidence on behalf of the defendant nos.1A to 1C has been led in

common and on behalf of the defendants 1A to 1C, Mr. Ashwin Mehta has deposed by filing similar affidavits in all the three suits, several portions of which have already been struck out as not being to his personal knowledge. The cross-examination of Ashwin Mehta was common in the three Suits. The witness-Ashwin Mehta deposed that about 4,000 shares of ACC were sold by Ghanshyamdas to HSM through brokerage firm of Vinod Biyani. 4,000 shares of ACC were sold by Vinod Biyani to the deponent's brokerage firm, against which payment of Rs.72 lakhs was made vide credit slip issued by HSM through Vinod Biyani in a settlement bearing no.12. A credit Kapli was given on 5th October 1990 to Vinod Biyani. According to the deponent, the plaintiffs in all the three suits willingly executed transfer deeds and delivered them to Ghanshyamdas Biyani and Ramesh Biyani, both of whom were mercantile agents and members of the BSE. The consideration towards the shares of ACC has been paid for by HSM and Ashwin Mehta and no direct dealings took place between the plaintiff and two brokerage firms of HSM and Ashwin Mehta. The payment of these suit shares have been made to M/s. Ramesh Biyani and M/s. Vinod Biyani and books of accounts maintained by the Mehtas' firms reflects the true picture. The witness has sought to produce the extract of the ledger account of M/s. Ramesh Biyani and M/s. Vinod Biyani in the books of HSM and the relevant extracts of ledger account of Vinod Biyani in the books of M/s. Ashwin Mehta. These documents are sought to be tendered in evidence along with the copies of bank

statements said to be certified under the Bankers' Books Evidence Act, 1891 as proof of payment. According to the deponent, the transactions in the suit shares were undertaken with M/s. Ramesh Biyani and M/s. Vinod Biyani as brokers acting as clients and commonly known as "broker to broker direct transactions" on client basis. This is sought to be explained by using a separate code assigned by HSM to Ramesh Biyani and a separate code to Vinod Biyani by HSM and Ashwin Mehta.

43. According to the deponent, the plaintiffs *"have recourse only to Shri Ghanshyamdas Biyani, Shri Ramesh Biyani and M/s. Vinod Biyani"*. He has further deposed that barring Ramesh Biyani, the other plaintiffs have neither met HSM nor have they handed over delivery of their shares to him and therefore their claim is not correct. One thing is clear from this affidavit-of-evidence that Ramesh Biyani did meet HSM and to that extent, the case of the plaintiff that the suit shares were handed over to defendant no.1-HSM through Ramesh Biyani cannot be disputed. The admission of the defendants' witness therefore to this extent is relevant. The contents of all the three affidavits are set out above. However, prior to Ashwin Mehta being cross-examined, Vinod Biyani was summoned as the defendants' first witness and treated as common evidence in all three suits. Upon being called upon to produce ledger accounts in respect of M/s. Harshad Mehta and M/s. Ashwin Mehta for financial year 1st April 1991

to 31st March 1992, he did not have the ledger accounts in his possession, he stated that he had no dealings with the two firms during 1st April 1991 to 31st March 1992; however during financial year April, 1990 to March 1991, he had dealings with these two firms. Although the witness had stated that he may have in his possession bills pertaining to the transactions for the aforesaid period and sought time to produce the same, when the witness appeared on the adjourned date, he deposed that he could not find the bills which he expected to link with the ledger accounts. Thus, examination of Vinod Biyani did not benefit the defendants 1A to 1C.

44. Vinod Biyani was called upon to produce a ledger account of HSM and Ashwin S. Mehta. These have come on record as Exhibits D-1(2) and D-1(3) in Suit No.1 of 2013. It shows an opening balance as of 7th July 2019 in a sum of Rs.91 lakhs. The amount is debited on 19th July 1990. Five further credit entries are to be found. They are transaction descriptions referred to these credits as A09-0107, A11-0124, two debits towards cheques. There are matching credits for every debit entry. In the case of Ashwin Mehta, there are few additional entries, however, none of these entries can be linked in the case of Ashwin Mehta for the period 30th March 1990 till 18th February 1991. There are several debit and credit entries, but none of these were co-related by the witness or by the defendants with the transactions pertaining to the suit shares. Thus, in my

view, the evidence of Vinod Biyani does not come to the assistance of the defendants 1A to 1C. In fact, even during submissions, no attempt has been made to link any of these entries to the payments for the suit shares and on one hand, it is the case of Ashwin Mehta that certain credit entries were issued for adjustments, these are also not brought on record. No references to these transactions have been pointed out in these accounts and thus Vinod Biyani having stated on 23rd August 2018 that he has no contract notes or bills, no benefit can be derived by the defendants 1A to 1C from the deposition of Vinod Biyani.

45. Vinod Biyani's examination commenced on 9th August 2018, after having deposed that he did not have in account, ledger accounts for two account firms and claiming that he had possession of bills relating to transactions referred to in Share Delivery Memo Nos.303 and 304 dated 20th December 1990 [Exhibits D-1(2) and D-1(3)] referred to in Suit No.2 of 2013, no such bills could be produced by him. On the other hand in relation to the transactions after 16th November 1990, the witness stated that they have not entered into any financial dealings during April, 1990 to March, 1991 with late HSM after 16th November 1990. When shown Exhibit D-1(2), as stated above, the witness could not identify trades carried out from the exchange, whereas he had deposed in answer to question no.10 in the evidence recorded in Suit No.2 of 2013 that if

trades are carried out on the stock exchange, delivery and payment would be through the exchange and only if the transactions are not on the stock exchange, would delivery and payment be direct. He had no details and hence no answer to the queries relating to the transactions carried out by him on instructions of the plaintiffs in the three suits and during the period April, 1990 to March, 1991. Even in relation to Exhibits D-1(2) and D-1(3) in Suit No.2 of 2013, he claimed that written record used to be maintained, but not any longer. He further deposed that the transactions carried out to his office were made on delivery memos bearing his name and not on delivery memos bearing names of other parties. This is clearly contradicting the 1st defendants' case qua the plaintiff and Ramesh Biyani's role. Thus, Exhibit P-12, which the plaintiff has established as pertaining to the suit transactions, is not reflecting any of the transactions that the defendants 1A to 1C have attributed to Vinod Biyani and/or Ghanshyamdas Biyani.

46. Attention of the witness -Vinod Biyani was invited to Exhibit D-1/3 in Suit No.1 of 2013 and he was asked whether any of the transactions was carried out on behalf of or on the instructions of the plaintiffs in these three suits, the witness did not answer the question. The witness stated that since the entries pertain to April, 1990 to March, 1991, he could not answer the question. Vinod Biyani further admitted that although during the period April, 1990 to March,

1991, in relation to the statements at Exhibits D-1/2 and D-1/3 in Suit No.1 of 2013, deliveries effected were to be recorded in his office, those records were maintained but he does not have them now. He volunteered that record would be manual, but the manually maintained record is not available. An office-copy of the delivery sheet is maintained in his own name, but records are not available. He was shown Share Delivery Memos at Exhibits P-13(1) and P-13(2) marked in Suit No.1 of 2013, as deliveries were made over on third-party memos like Exhibit P-13(1). He admitted that no deliveries in respect of the transactions carried out to his office were made on delivery memos of any other parties. In other words, delivery memos in respect of the transactions carried out by Vinod Biyani's office would always bear his firm's name. Certain entries mentioned in the statement of accounts were identified as Valan numbers and bill numbers. He admitted that deliveries would normally take place between 10 to 15 days after the transactions carried out.

47. Vinod Biyani had no knowledge of whether Ghanshyamdas Biyani had sought financial assistance from HSM or Ashwin Mehta in their individual capacities or as proprietors of the two concerns, namely, M/s. Harshad Mehta and M/s. Ashwin Mehta. With reference to a query on an entry of Rs.50 lakhs paid on 17th September 1990 and as reflected in Exhibit D-1/2, witness could not identify the description of the entry. He however admitted that in off-market

transactions between HSM and Ashwin Mehta and himself, payments would be made against delivery of the shares. Thus, it is seen that the witness has not identified any payments made against delivery of any of the suit shares. Since the evidence is in common, the defendant nos.1A to 1C have not established that payments have been made for purchase of the suit shares through Vinod Biyani.

48. I find that Ashwin Mehta was cross-examined on 5th April, 2019, after Mr. Vinod Biyani was cross-examined. One would have expected that Ashwin Mehta would have produced appropriate evidence in support of the defendants' case, but in the cross-examination, it became evident that Ashwin Mehta became aware of the suit transactions after the suit was listed on board. He stated that defendant no.1-HSM had not informed him of the suit claims, but a vague reference is made to having helped Ghanshyamdas Biyani. Ashwin Mehta's evidence was restricted to the affidavit in lieu of examination-in-chief dated 27th October 2018. In cross-examination, he admitted that he became aware of the suits only when they were listed on the board of the Special Court. HSM had never informed him of the details of the suit claim, but HSM had made reference to Ghanshyamdas Biyani, whom he had helped. Particulars of the suit and the transactions were not discussed by HSM with the witness. He was not aware that HSM had engaged Krishnakant Shah, Advocate to appear in the suit, when it was in the High Court. He was shown certified copies of the orders

passed in Suit No.855 of 1991, where HSM and others were defendants and Krishnakant Shah had appeared for said HSM. He was not aware as to who Krishnakant Shah or K.P. Shah were. Certified copies of those orders were marked as Exhibits D-1/5(1) to D-1/5(4) in Suit No.1 of 2013. He was also not aware whether any affidavit-in-reply has been filed by HSM to the notice of motion in the suit, nor did he know the reason why the reply was not filed. He volunteered that there was a break down in his business as a result of which in several matters, they were not represented. Ashwin Mehta was also not aware why reply was not filed prior to 1992, since the break-down occurred in 1992. He admitted that the orders in the motion dated 23rd November 1993 and 3rd December 1993, i.e. the orders marked as Exhibits D-1/5(3) and D-1/5(4) in Suit No.1 of 2013, were not challenged, but attributed it to the break-down in his business.

49. Equally, he was unaware whether any written statement was filed by HSM in the above suit. I may observe here that defendants' evidence and to some extent plaintiff's being in common, the cross-examination is also recorded in common and it equally apply in other suits. No separate evidence is led by the defendants 1A to 1C and 4 and both the parties have proceeded on the basis of evidence being in common. He admitted that he had consulted Jyoti H. Mehta prior to filing written statement in the above suit, contents of which she has

approved. All information was provided to him by Jyoti H. Mehta and the same is being incorporated in the written statement. Thus, he does not have personal knowledge of many aspects he has deposed about. Pertinently, he admitted that M/s. Harshad Mehta and M/s. Ashwin Mehta maintained separate books of accounts and not in common. When asked about reason for not filing written statements in the suit between 2005 and 2016, he submitted that defendant no.1A did not have personal knowledge and that defendant nos.1B and 1C are not concerned with the payments. They are not claiming any interest in the assets of HSM. He disputed a suggestion that he had no knowledge of having financially assisted Ghanshyamdas Biyani; yet, contended that the transactions happened in his presence and both M/s Harshad Mehta and M/s. Ashwin Mehta have assisted Ghanshyamdas Biyani. Documentary evidence was sought to be brought on record in support of these contentions, but the attempt to introduce 9 documents in a compilation has not succeeded since they have not been proved and cannot be read in evidence. No attempt was made to prove these documents. He disputed a suggestion that the plaintiff had not delivered any of the suit shares to Ghanshyamdas Biyani.

50. Ashwin Mehta also disputed a suggestion that the plaintiff had delivered the suit shares to Ramesh Biyani in his capacity as mercantile agent or broker; yet, persisted in his answer that consideration had been paid for the suit shares.

His attention was invited to paragraph 12 of his affidavit-in-evidence, in which he has deposed that the plaintiffs had willingly executed transfer deeds along with the shares standing in their names and delivered them to Ghanshyamdas Biyani and Ramesh Biyani. Both of them were mercantile agents and were members of the Bombay Stock Exchange and that consideration had been paid for these shares by M/s. Harshad Mehta and M/s. Ashwin Mehta. No direct dealings had taken place between plaintiffs and the aforesaid brokerage firms. He was therefore asked whether any documents have been introduced in evidence in support of these contentions, to which he identified Share Delivery Memo No.310 dated 20th December 1990 marked as Exhibit P-12 is the relevant document. This document, as we have seen, is the memo in respect of which Ramesh Biyani has already deposed. Cross-examination of Ramesh Biyani does not support the case of defendants 1A to 1C.

51. Ashwin Mehta however volunteered that the said exhibit specifies that the shares listed therein of HSM and ACC Ltd. are delivered by Ramesh Biyani to HSM towards purchase of shares by him. This however is not borne out by the document or the evidence in cross-examination of either Shrikant Biyani or Ramesh Biyani. This has not been brought out in the evidence of Vinod Biyani, who is said to be instrumental in the alleged transaction of purchase. Thus, in my view, the defendants 1A to 1C have not been able to establish that the suit

shares were handed over to original defendant no.1-HSM against purchases made by HSM, as contended in paragraph 18 of the written statement of defendant nos.1A to 1C, nor are the defendants able to establish that M/s. Harshad Mehta or M/s. Ashwin Mehta or Mr. Harshad Mehta and Mr. Ashwin Mehta had in their individual capacities or as proprietors of their brokerage firms paid consideration to Vinod Biyani on behalf of the plaintiff, as stated in paragraph 9 of the written statement of defendant nos.1A to 1C.

52. Issue no.4 required defendants 1A to 1C to establish that they had paid consideration for the suit shares to Vinod Biyani. This has not been established, as seen from analysis of the depositions of Ashwin Mehta and Vinod Biyani above. Although Vinod Biyani was summoned as a witness, no attempt has been made to seek confirmation of the transactions, as pleaded by the defendant nos.1A to 1C. In fact, there has been no attempt, not even the slightest attempt, to establish payment either from Harshad S. Mehta or Ashwin S. Mehta or their respective proprietary concerns to Vinod Biyani or for that matter Ghanshyamdas Biyani. In the light of the aforesaid, there being no evidence of any consideration having been paid for the suit shares by HSM or Ashwin Mehta to Vinod Biyani, Issue No.4 is answered in the negative.

53. Issue no.5 can be answered along with issue no.4 inasmuch as there is no

evidence to show that shares were handed over to defendant no.1-HSM against any purchase made by HSM. If the purchase has been made by HSM to his own account, share transfer forms would not be in blank; the fact that is not disputed by defendant no.1 or on his behalf. In effect, purchase has not been established. Payment of consideration has also not been established even assuming that there was a valid purchase of these shares. Hence, issue no.5 is safely answered in the negative and against the defendants 1A to 1C.

54. Issue nos.6, 7 and 8 can be considered together.

Issue No.6 : Whether plaintiff is the owner of suit shares ?

and

Issue No.7 : If answer to issue number 6 is in the affirmative, whether original defendant no.1 held and presently defendant nos.1A to 1C hold the suit shares in trust for the plaintiff and are in wrongful possession of the said shares ?

and

Issue No.8 : If answer to issue no.6 is in the affirmative, whether the plaintiff is entitled to receive dividend on the suit shares and all accretions thereto?

55. The defendants 1A to 1C contended that the shares were purchased as part of a transaction under which the defendant nos.1A to 1C and the firms of Harshad Mehta and Ashwin Mehta and probably J.H. Mehta helped

Ghanshyamdas Biyani to tide over financial difficulties. There is no evidence whatsoever about how this financial assistance was rendered but it is claimed that these shares were purchased by the defendants 1A to 1C at the behest of Ghanshyamdas or at his instance or on his say so, but there is no disputing the ownership of the shares. Hence, the shares stood in the names of the plaintiff. The fact that the plaintiff was the holder of these shares has not been disputed by the defendant no.2-ACC. On the other hand, the written statement of defendant nos.3-the Custodian shows that the plaintiff's 805 ACC shares were transferred to defendant no.4-Sudhir Mehta. Name of defendant no.4 was entered apparently at the instance of defendant no.1-HSM. The transfer having taken place from the plaintiff, the title of the plaintiff can hardly be questioned. Hence, issue no.6 must be answered in the affirmative.

56. Issue no.7 would require slight re-positioning in view of the fact that defendant no.4 is now claiming 805 shares of ACC as a purchaser. Defendant no.4 has not filed any written statement and the 805 ACC shares are presently standing in the name of defendant no.4 represented by Mr. Vivek Sharma. No submissions have been made in this behalf. Thus, the question is whether defendant no.4 not having contested the suit and being a notified party, the Custodian having recorded that the 805 shares of ACC have already been sold, the issue that arises is as to the relief that the plaintiff can claim. Defendant no.4

has not set out any independent defence and since defendant no.4 claims through defendant no.1 and having answered issue no.6 in the affirmative, the plaintiff was at all material times the owner of the suit shares and defendants 1A to 1C and 4 having failed to establish purchase, the original defendant no.1 could not have held the suit shares and claimed title contrary to that of the plaintiff. Issue No.7 therefore must be answered in the affirmative.

57. Having answered issue nos.6 and 7 as above, issue no.8 must be answered in the affirmative. The plaintiff is in my view entitled to the suit shares and/or the sale proceeds and accretions and dividends thereon. In conclusion, the plaintiff is entitled to succeed. Since the accruals would include the bonus and rights shares, Mr. Sancheti contended that all accruals would have to be given to the plaintiff. It is however contended on behalf of the notified parties that even assuming the plaintiff's case is proved, the plaintiff would not be entitled to rights shares since they were paid for by the Custodian from funds of the notified parties. Likewise, accruals on the rights shares by way of dividend and bonus also cannot be claimed by the plaintiff. Mr. Sancheti rested his case by contending that rights shares would also fall within the entitlement of the plaintiff.

58. This brings me to consider the reliefs to be granted. In the facts at hand,

the suit shares have been misappropriated by defendant no.4 with the assistance of defendant no.1. Defendant no.4 has not filed any written statement in defence. Thus, defendant no.4 has not established entitlement to these shares in any manner. No submissions have been advanced by the defendant no.4. The plaintiff having established that the suit shares were never intended to be sold to the defendant no.1 or defendant no.4, it is obvious that entitlement to the rights shares could not have been usurped by these defendants. Rights shares are seen to have been applied for and issued to the Custodian by the company. The monies were paid for by the Custodian from the accounts of the notified parties.

59. Shares are issued on rights basis when a company proposes to increase subscribed share capital. They are offered to the existing shareholders of the company, who as on date of the offer are equity shareholders. In the present case, the rights shares were issued to defendant no.4 on the application of the Custodian. The Custodian has so applied in the belief that the original shares handed over by the plaintiff to the defendant no.1 were part of attached property. However, it transpires now that the shares in question were not forming part of the assets of the notified parties. If these shares were still existing and were being held by the Custodian in the account of the notified parties, it could have been contended by the notified parties to the effect that they were “existing shareholders” as on date the rights issue was announced

and to which the Custodian subscribed and those circumstances would require this court to consider whether the notified parties' claim of being "existing" shareholders as on date of rights issue and the subscription amount having been paid from the attached accounts, they could be deprived of these shares. However, in the case at hand, that issue will not arise since the shares have admittedly been sold for value recovered by the Custodian. Having sold these shares, the question that arises is whether the monetary value equivalent to the number of rights shares could be claimed by the plaintiff.

60. The value of the rights shares cannot, in my view, be claimed by the plaintiff. One other aspect to be considered is whether the notified parties can benefit by reason of the plaintiffs having omitted to claim rights shares and / or the difference between buying and selling prices. In my view, the entire value of the rights and bonus shares issued on such rights shares thereon cannot be paid over to the plaintiffs even if they succeed. The difference between buying and selling prices, if any would in my view be payable to the plaintiffs as otherwise it would amount to unjust enrichment in the hands of the notified parties. This is for the reason that payment for the rights shares has been made from the accounts of the notified parties and one has to consider whether the plaintiffs have made out a case for payment of the difference between the price at which the shares were purchased and the price at which they were sold.

61. The record of the Special Court indicates that defendant no.4-Sudhir Mehta filed Miscellaneous Application No.125 of 1995 against ACC Ltd. and the Custodian, wherein he sought (i) an order directing the Custodian to release Rs.39,58,000/- towards the application money in order to enable him to apply for equity shares of ACC Ltd. on rights entitlement basis; (ii) to direct sale of the shares and debentures belonging to the defendant no.4 to the extent required to provide for the application money and; (iii) in the meantime, to keep the rights shares' entitlement in abeyance under Section 206(A) of the Companies Act, 1956, without forfeiting the same.

62. On 23rd February 1995, an order came to be passed by this court in terms of the Minutes of Order signed by counsel for the parties, whereby the Applicant therein was directed to furnish Stockinvest (a mode of payment then prevalent) for the application money and recorded the manner in which the monies would be paid. Further, Miscellaneous Application No.416 of 1999 came to be filed seeking directions against ACC Ltd. (i) to disclose holding of the applicant and the rights entitlement; (ii) to furnish letters of offer; (iii) to direct the company to keep the rights entitlement offer in abeyance and; (iv) also for this court to sanction or release of moneys for subscription amount for the rights entitlement. A direction was also sought against the Custodian to compute the amount

required to be paid. By the Minutes of Order, the applicant-Sudhir Mehta was directed to furnish Stockinvest to the extent of the application money and State Bank of Mysore was directed to issue them necessary numbers of Stockinvest. Allotment and call money was to be paid to the company on the undertaking reflected therein being fulfilled.

63. Later it appears that, vide Miscellaneous Petition No.119 of 1999, the Custodian sought permission to apply for rights issues of ACC Ltd. in relation to the holdings of various notified parties including defendant No.4-Sudhir Mehta and a direction against him to do all things necessary for the purpose of applying for the rights issue, for permission to release funds from the attached accounts of the respective notified parties and for permission to dispose of rights entitlement of the shares. In respect of benami shares, a direction was sought against ACC Ltd. to issue rights shares and execute relevant documents for the same or for renouncing the same, as the case may be. Pending determination of ownership of benami shares, the Custodian sought permission to release funds from the attached accounts of respondent no.2-Harshad S. Mehta.

64. In the alternative, leave was sought to dispose the rights entitlement of the benami shares in the market and deposit sale proceeds in a suspense account. In the meanwhile, in respect of unregistered shares, a direction was

sought against ACC Ltd. to keep the rights issue in abeyance. On 2nd August, 1999, the Miscellaneous Petition No.119 of 1999 was allowed by the Special Court in terms of prayer clause (a), granting permission to the Custodian to apply for 1,31,897 shares of Rs.10/- each of ACC Ltd. on rights basis and to release a sum of Rs.72,54,335/-. The 1,31,897 shares included the rights shares entitlement accruing from the suit shares.

65. In view of the Custodian having filed an additional written statement, Mr. Sancheti on behalf of the plaintiff submitted that the shares of ACC are said to have been sold, as set out by the Custodian and as confirmed by the company. The notified parties and the company have not disputed the fact that the shares of ACC were sold. It is in the aforesaid manner that the rights entitlement was subscribed and the shares allotted. The question to be considered is whether the plaintiff would be entitled to the sale proceeds of the rights shares? It would perhaps be argued by the notified parties that the rights offered could not have been availed of by the plaintiff since the shares were by then transferred to defendant no.4 and were paid for from the accounts of the notified parties. That argument would have to be considered on merits. Although prima facie it does not appear that the notified parties could claim these shares subject to they are being compensated for the price paid and some interest thereon, this issue will not arise in the present set of facts since the shares have been sold. Having sold

the shares, it is only the sale proceeds that are now lying invested by the Custodian and since all the shares have been sold at the same price (the original 805 shares of ACC and the rights entitlement), the notified parties would be entitled to the monetary value of those shares since they had paid for the same. The plaintiff cannot claim the monetary value of the rights shares and bonus shares accruing on the rights shares. The plaintiff could possibly have claimed the shares, provided they had paid for it. Not having paid for the shares and the shares having been sold, the monetary value of the rights entitlement, which was subscribed and bonus thereon, would have to be retained by the notified parties. The plaintiff cannot seek payment of that amount. Thus, considering the alternative submission of Mr. Sancheti that the shares having been liquidated, the sale consideration should be paid over to the plaintiff, that submission cannot be accepted in its entirety. That relief can however be granted in respect of the original 805 shares and the 1996 bonus shares thereon. Since I find that the plaintiff has established that he was owner of the suit shares, the bonus shares on 805 would straightaway be part of the entitlement of the plaintiff. Thus, in my view, the Custodian will have to be directed to pay over the value of the shares sold, excluding the value of the rights shares and bonus on rights shares.

66. The Rights shares have not been subscribed by the Plaintiff but by the

notified party. These shares have also been sold. Even assuming the notified party stands to gain in the price difference between subscription of rights shares and its sale, the plaintiff has not led any evidence in relation thereto. There is nothing on record which would justify payment of such amount, however the Custodian shall verify whether the notified party has benefited from price differential and if so, make an appropriate report to deal on that aspect in due course. Since the plaintiff has not invested any monies in the rights shares, nor has he applied to court at the material time, there is no occasion to grant any relief in that respect to the plaintiff.

67. I therefore pass the following Order;

- (i) Suit is decreed in terms of prayer clauses (a) and a(iii) restricted to dividend on original 805 shares and bonus shares on 805 shares of face value of Rs.100/- and as sub-divided till date of sale.
- (ii) Suit is also decreed in terms of prayer (a) (iv) and decreed in terms of prayer a(v) to the extent of sale proceeds of the shares as decreed vide (a) above and interest accrued, if any.
- (iii) Defendant no.2-ACC Ltd. shall pay over to the Custodian unpaid dividend, if any, on the suit shares

within four weeks of service of a request from the
Custodian.

(iv) No costs.

(A.K. MENON, J.)