

Quote by Shравan Shetty, Managing Director, Primus Partners

Published in Economic Times

Feb 26, 2025 | 06:30:00 AM IST

Can margin trading losses on equity investments be recovered from spouse's demat account? SC rules yes, it can be in this case

The Supreme Court of India, in a recent ruling, held that a husband can be held jointly liable for stock market losses incurred by his wife if both were actively involved in making financial transactions, even if this was based on an oral agreement. The court may uphold a similar view in other related cases as well if it is established that the husband and wife have joint liability or have made shared use of the profits earned.

Read on: <https://economictimes.indiatimes.com/wealth/personal-finance-news/can-margin-trading-loss-on-equity-investment-be-recovered-from-spouses-demat-account-sc-rules-yes-it-can-be-in-this-case/articleshow/118560163.cms?from=mdr>



The Supreme Court ruled in the favor of AC Chokshi, directing Jatin Desai to pay R1,18,48,069/- along with 9% annual interest.

Making a loss in equity investment is not an uncommon thing. Often, equity investment is done with leverage, where you go for short-term borrowing to make an investment. If you incur losses after doing a leveraged trade, your demat account will have a negative balance, which you will need to settle within an agreed time frame. Suppose if your spouse incurs such a loss after a leveraged trade and has a negative balance in their demat account, will you be responsible for offsetting their losses from your own demat.

This month, the Supreme Court of India, in the case of AC Chokshi Share Broker Private Limited vs. Jatin Pratap Desai and ANR, held that the husband is “jointly and severally”

liable for a debit balance (debt) in a joint demat account registered under his wife's name.

What actually happened?

In 1999, Jatin and Heena Desai approached AC Chokshi for opening trading accounts. In 2001, as Chokshi asserts, Jatin attempted to offset the credit balance in his account against the debit, negative balance in his wife's account. Following a massive stock market crash in 2001, the debit in Heena's account ballooned to a massive Rs 1.18 crore. Chokshi sought to recover this amount from the couple.

The court observed that since both respondent 1 (husband) and respondent 2 (wife) have effectively entered into the transactions undertaken in each of their trading accounts together,

“the performance of the transactions in respondent no. 2's (wife) trading account is not only on her behalf but also on behalf of respondent no.1 (husband). Therefore, respondent no.1 is effectively a party to the client agreement between the appellant and respondent no. 2,” the court further noted. As per the apex court, “It is undisputed that both respondents are non-members or clients, but they entered into individual and separate client registration agreements, leading to separate client codes and accounts in each of their names.” “However, the appellant (AC Chokshi) has invoked arbitration against both of them for the debit balance in respondent no. 2's (wife) account based on an oral contract among the parties that both husband and wife will be jointly and severally liable for the transactions in each of their accounts,” the court added.

There was no written agreement between the husband and the broker to service this debt, but it was rather based on a verbal agreement. As per Tahira Karanjawala, Partner at Karanjawala & Co.”In recognizing a non-signatory spouse’s liability based on an oral agreement and the parties’ conduct, the decision in AC Chokshi promotes a pragmatic view of business reality rather than a hyper-technical one, emphasizing substantive dealings rather than sole reliance on formal contractual descriptors.

The ruling clarifies that arbitral jurisdiction can extend to non-member or non-signatory parties where the facts and evidence show a composite transaction and an implied contractual relationship. The case opens a plethora of questions regarding spouses’ financial liability towards each other. Can you be held financially responsible to pay o your spouse's losses in the stock market? We decode for you.

Can a spouse be held responsible for another’s losses in the stock market?

Says Rashmi Deshpande, founder of Fountainhead Legal, a law rm, “This judgment is based on unique facts, particularly the existence of an oral agreement that established joint and several liability between the spouses. Therefore, it should not be treated as a precedent for imposing joint and several liability in all cases. Moreover, with the majority of stock market transactions now conducted online, the scope for oral agreements is significantly limited.” Experts highlight that in the present day and age, with electronic records and strict regulations, it has become much harder to hold a spouse jointly responsible for stock market losses unless there is clear proof of their involvement or participation. Stock market regulations ensure clear ownership of accounts. Each person must complete KYC formalities, and unless a Power of Attorney is given, one spouse cannot trade on behalf of the other.

Deshpande explains that the SEBI (Stockbrokers and Sub-Brokers) Regulations, 1992, along with Bye-law 247A of the BSE Bye-laws and the SEBI Guidelines on Regulation of Transactions Between Clients and Brokers (1993), explicitly mandate that all trading accounts must be maintained separately, ensuring a clear distinction between individual investors, including spouses. Adds Shivani Rajesh, Assistant Professor of Law, BITS Law School, Mumbai, “The current labyrinth of SEBI regulation means that most of the transactions would either be in the form of a written agreement or would include an electronic trace. With the growth of online trading platforms, most transactions emanate electronically from the specific account of the client or include a verification process via the client’s registered email. The SEBI Circular on Prevention of Unauthorised Trading by Stock Brokers, 2018, requires the brokers to execute the client's orders only after recording the evidence of the client placing such an order. Similarly, SEBI’s Master Circular on Margin Trading Facility, 2022, provides that clients availing of margin trading must enter into written agreements.

However, this does not discount the fact that to date, in the Indian family structure, major financial decisions in many households are made by husbands, even when wives maintain separate accounts. Hence, “if the facts establish that one spouse exercised decision-making authority over financial transactions, their liability cannot be disregarded solely based on distinct regulatory provisions,” adds Deshpande.

Under what conditions can the spouses be considered liable for each other’s losses?

As mentioned by the apex court in its decision, “While interpreting contracts, courts must acknowledge the practicalities of how parties execute and participate in transactions and how they understand and perform mutual obligations under the contract”. This means that liabilities will now be decided on a case-to-case basis of whether the spouse was actively involved in decision-making or shared profits. The mere distinction of husband and wife as separate financial entities will not save them from each other’s losses if it is established that the two of them were actively and significantly involved with each other’s financial affairs. As per Rajesh, “Even today, financial dealings can occur where one spouse handles both their own and their partner’s trading account, whether through oral instructions, written communications, or digital interactions such as emails and messages. In light of this, although oral contracts may be difficult to enforce and the requirement of maintaining electronic evidence may provide protection against informal claims, if a spouse has acted as a guarantor or co-investor or has been actively involved in trading under a shared understanding (whether oral or written), liability could still arise.”

How can courts determine the joint liability of spouses?

Explains Sonam Chandwani, Managing Partner KS Legal & Associates, “Courts today determine joint liability based on clear evidence, such as communication records, shared use of profits, a Power of Attorney allowing one spouse to operate the other's account, or proof that both jointly utilized the funds to buy a house or car. Testimonies in court also play a role, but proving active involvement remains challenging due to strict KYC norms and individual account ownership. However, if it is established that both spouses were financially involved, whether through funding, profit-sharing, or decision-making, courts can hold them jointly liable for the stock market losses.”

Shravan Shetty, Managing Director, Primus Partners explains that the court may take a similar view especially if either of the spouses is not gainfully employed. “Depending on the nature of financial dealing between the spouse there can be a possibility of the courts taking a similar view, especially if the spouse does not have a source of income.”