

Supreme Court of India

Pratima Chowdhury vs Kalpana Mukherjee & Anr on 10 February, 1947

Author:

Bench: P Sathasivam, Jagdish Singh Khehar

“REPORTABLE”

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1938 OF 2014

(Arising out of SLP (Civil) Nos. 15252 of 2006)

Pratima Chowdhury

...Appellant

Versus

Kalpana Mukherjee & Anr.

...Respondents

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. Orchestra Co-operative House Society Limited (hereinafter referred to as ‘the Society’) raised flats at 48/IE, Gariahat Road, Calcutta – 700019. Indirani Bhattacharya became a member of the Society on 12.1.1987. She was issued share certificates bearing nos. 0047 and 0048. Based on the above membership she was allotted flat no. 5D for a consideration of Rs. 4 lakhs. The above flat measuring 900 sq. ft. comprised of three bed rooms, two bath rooms, one drawing-cum-dinning room, a kitchen and verandah on the fourth floor. In addition to the above, she was allotted one covered garage space on the ground floor. The transfer of the flat no. 5D by the Society to Indirani Bhattacharya was approved by the Deputy Registrar, Co- operative Societies.

2. On 27.3.1991, Indirani Bhattacharya submitted her resignation from the Society in favour of Pratima Chowdhury (i.e., the petitioner herein). On 15.4.1991, Indirani Bhattacharya executed an agreement for transfer of flat no. 5D to Pratima Chowdhury subject to the consent of the Society and the approval of the Deputy Registrar, Co-operative Societies, for a consideration of Rs. 4 lakhs. The Society having consented to the request of Indirani Bhattacharya sought the approval of the Deputy Registrar, Co- operative Societies through a letter dated 29.4.1991. In this behalf it would also be relevant to mention that Board of Directors of the Society had resolved in its meeting held on 16.2.1992, to accept the resignation of Indirani Bhattacharya, as also, the consequential transfer of the membership of the Society and the ownership of the flat to the name of Pratima Chowdhury. In the above resolution, the name of Pratima Chowdhury as a member of the Society was approved with effect from 9.1.1992. The Secretary of the Society informed Pratima Chowdhury on 17.2.1992, that her membership to the Society, as also, the transfer of flat no. 5D to her name, had been

approved by the Deputy Registrar, Co-operative Societies.

3. The facts available on the records reveal that Partha Mukherjee (son-in-law of the petitioner's sister, and son of the respondent) occupied the petitioner's flat. Partha Mukherjee was employed as Regional Sales Manager with Colgate Palmolive (India) Limited. On 9.3.1992, Colgate Palmolive (India) Limited, confirmed having taken flat no. 5D on lease and license, for a period of three years (with effect from 1.4.1992), for the residence of Partha Mukherjee. The pleadings also reveal, that with effect from 1.4.1992, Colgate Palmolive (India) Limited, took the aforesaid flat on a monthly rent of Rs. 5,000/-. The above said monthly rent, was deposited in the joint account of the petitioner Pratima Chowdhury and Partha Mukherjee.

4. On 29.6.1992, the petitioner Pratima Chowdhury addressed a letter to the Secretary of the Society, requesting the Society to transfer flat no. 5D to the name of her nominee Kalpana Mukherjee. The letter dated 29.6.1992 of Pratima Chowdhury, made some express factual disclosures. Firstly, that she was not in good health. Secondly, that she was not in a position to move to Calcutta from Bombay in the near future. Thirdly, that Kalpana Mukherjee was already residing in the flat in question along with Partha Mukherjee. Fourthly, that above nominee Kalpana Mukherjee was her close relative. In addition to the request of transfer of flat no. 5D in favour of her nominee Kalpana Mukherjee, Pratima Chowdhury also informed the Society through her letter dated 29.6.1992, that all municipal taxes and service charges in connection with the above flat should be collected from Kalpana Mukherjee.

5. Pratima Chowdhury then addressed another letter dated 11.11.1992, to the Secretary of the Society, reiterating her request made in the previous letter dated 29.6.1992 wherein she again expressed clearly that the transfer being sought by her, was without any monetary consideration.

6. It was pointed out in letter dated 11.11.1992, that the formal request for the transfer was only being made, in order to comply with the rules regulating such transfer, and also, to avoid future complications. Consequent upon the aforesaid deliberations, Pratima Chowdhury executed an agreement dated 13.11.1992, transferring her right, title and interest in the flat no. 5D. On the same day as the aforesaid agreement was executed, Kalpana Mukherjee moved an application (on 13.11.1992).

7. The Board of Directors of the Society in their meeting held on 14.2.1993, resolved to accept the resignation of Pratima Chowdhury, and to accept the membership of Kalpana Mukherjee (in place of Pratima Chowdhury), and to seek the approval of the Deputy Registrar, Co-operative Societies for the transfer of flat no. 5D to the name of Kalpana Mukherjee, on the basis of letters of Pratima Chowdhury dated 11.11.1992 and 13.11.1992. Accordingly, the Secretary of the Society addressed a letter dated 10.3.1993 to the Deputy Registrar, Co-operative Societies, for the approval of the decision of the Board of Directors (of the Society, dated 14.2.1993).

8. On 23.4.1993, Pratima Chowdhury wrote a letter to the Senior Commercial Executive, of the Calcutta Electric Supply Corporation (South Region Office) requesting him to transfer the electricity-supply meter of flat no. 5D to the name of Kalpana Mukherjee. The instant letter dated

23.4.1993, is also disputed by Pratima Chowdhury. She has even disputed her signature on the said letter. She also filed a first information report at the Gariahat Police Station, Kolkata, complaining that her signature on the above letter was forged.

9. The Assistant Registrar, Co-operative Societies raised certain objections on the request of the Society for transfer of flat no. 5D from the name of Pratima Chowdhury to the name of Kalpana Mukherjee. In this behalf the Assistant Registrar, Co-operative Societies informed the Secretary of the Society, that the application of Kalpana Mukherjee for membership had not been submitted in the proper format. It was also pointed out, that the original affidavit had not been appended to the application. Lastly, it was brought out, that the Salary Certificate, Income Tax Clearance Certificate and Professional Tax Certificates had not been appended to the application of Kalpana Mukherjee, for the transfer of the flat in her name. On 22.9.1993, the Secretary of the Society provided all the required documents sought by the Department of the Co-operative Societies.

10. Partha Mukherjee was transferred by his employer Colgate Palmolive (India) Limited, from Calcutta to Bombay. Consequently, Colgate Palmolive (India) Limited terminated the agreement executed by it with Pratima Chowdhury on 19.10.1993, with immediate effect. In the letter dated 19.10.1993, Colgate Palmolive (India) Limited required Partha Mukherjee to hand over vacant possession of flat no. 5D to Pratima Chowdhury, after refund of security. On 21.10.1993, Kalpana Mukherjee, from her own account, deposited rent in the Bank account of Pratima Chowdhury. On 28.10.1993, Partha Mukherjee addressed a letter to P.R. Keswani, Company Secretary of Colgate Palmolive (India) Limited, along with a receipt bearing no. 9893, depicting refund of the security deposit (of Rs. 60,000/-). The aforesaid refund was shown to have been made by Pratima Chowdhury.

11. On 16.12.1994, 500 shares of Tata Chemicals Limited, 50 shares of Siemens, 500 shares of Indian Aluminium and 100 shares of I.T.C. Hotels, standing in the joint names of Partha Mukherjee and Sova Mukherjee (wife of Partha Mukherjee) were transferred to the name of Pratima Chowdhury. According to the petitioner Pratima Chowdhury, the above transfer of shares was in lieu of loans extended by her to Partha Mukherjee. However, according to Kalpana Mukherjee, the transfer of the above shares, constituted consideration paid on her behalf (by her son Partha Mukherjee) to Pratima Chowdhury in lieu of the transfer of flat no. 5D.

12. Pratima Chowdhury wrote a letter dated 28.2.1995 to the Secretary of the Society, that she had not received any reply to her letter dated 11.11.1992. She also informed the Secretary of the Society, that she had decided to return to Calcutta permanently. Accordingly, she informed the Secretary of the Society, that her request for transfer of her membership to the name of Kalpana Mukherjee, be treated as withdrawn. It is the case of Pratima Chowdhury, that the Society never responded to her letter dated 28.2.1995. It is also her case, that her letter dated 28.2.1995 was never forwarded by the Society, to the Department of Co-operative Societies.

13. On 8.3.1995, the Society approached the Deputy Registrar, Co-operative Societies, seeking approval for the admission of Kalpana Mukherjee as a member of the Society (in place of Pratima Chowdhury). On 13.3.1995, the Deputy Registrar, Co-operative Societies conditionally approved the

membership of Kalpana Mukherjee. Accordingly, on 13.3.1995 itself the shares of Pratima Chowdhury were transferred to the name of Kalpana Mukherjee. On 22.3.1995, Pratima Chowdhury addressed a letter to the Deputy Registrar, Co-operative Societies, with a copy to the Chairman of the Society. In the above letter, the Deputy Registrar, Co-operative Societies was requested to direct the Society to withdraw the offer of transfer of her membership to Kalpana Mukherjee. It was also requested, that the application made by Kalpana Mukherjee for transfer of share certificates in her name, be not approved. The instant letter dated 22.3.1995, depicts the fact that Pratima Chowdhury was unaware of the deliberations of the Society, as also, the approval (of the deliberations of the Society), by the Deputy Registrar, Co-operative Societies, on 13.3.1995. In pursuit of the same objective, Pratima Chowdhury wrote another letter dated 28.3.1995, to the Secretary of the Society. She enclosed therewith, the letter which she had addressed to the Deputy Registrar, Co-operative Societies dated 22.3.1995. Therein, she again reiterated, that her request for transfer of membership in favour of Kalpana Mukherjee be treated as withdrawn. In order to consider the request made by Pratima Chowdhury in her letter dated 22.3.1995 (to the Deputy Registrar, Co-operative Societies) and the letter dated 28.3.1995 (to the Secretary of the Society); the Society convened a meeting of the Board of Directors on 2.4.1995. Rather than considering the issue on merits, the Board of Directors resolved, that it had no legal competence to restore the membership of the Society, as also, the retransfer of the ownership of the flat no. 5D, to Pratima Chowdhury. Having so resolved, the Secretary of the Society forwarded a copy of the resolution dated 2.4.1995, to the petitioner on 10.4.1995.

14. At this juncture, it would be relevant to mention, that the Board of Directors of the Society approved the transfer of flat no. 5D (comprising of three bed rooms, two bath rooms, one drawing-cum-dinning room, one verandah and one kitchen on the fourth floor, located at no. 48/IE, Gariahat Road, Calcutta - 700019 to the name of Kalpana Mukherjee. In addition to the aforesaid flat, the ownership of Pratima Chowdhury also comprised of a covered garage space, on the ground floor. The same were not mentioned in the clearances dated 14.2.1993 (by the Board of Directors of the Society) and 13.3.1995 (by the Deputy Registrar, Co-operative Societies). Consequently based on the agreement dated 25.4.1995 between Kalpana Mukherjee and the Society, the said garage space was also subsequently transferred to the name of Kalpana Mukherjee.

15. On 16.4.1995 within two weeks, from the date decision taken by the Board of Directors (on 2.4.1995) and within one week from the date of communication thereof to the petitioner (through letter dated 10.4.1995), Pratima Chowdhury addressed a notice dated 16.4.1995, contesting the validity of the Board of Directors' Resolution dated 2.4.1995. The petitioner also assailed the approval of the said transfer dated 13.3.1995. The Deputy Registrar, Co-operative Societies referring to the petitioner's letter dated 28.2.1995 (wherein Pratima Chowdhury had withdrawn her request for transfer of membership in favour of Kalpana Mukherjee), wrote a letter dated 31.5.1995 to the Secretary of the Society. In the letter dated 31.5.1995, the Deputy Registrar, Co-operative Societies also highlighted the fact that, the Society had not brought the letter dated 28.2.1995 to the notice of Deputy Registrar, Co-operative Societies, at the time of seeking approval of the Co-operative Department. The Secretary of the Society was accordingly directed, to take a decision on the matter, and to forward the same to the Deputy Registrar, Co-operative Societies. Being alive of the letter dated 31.5.1995, which was addressed by the Deputy Registrar, Co-operative Societies to the

Secretary of the Society, the petitioner through her letter dated 13.6.1995 informed the Secretary of the Society, that the withdrawal letter dated 28.2.1995 addressed by her was received by the Secretary of the Society, and further that the same had been duly acknowledged on 6.3.1995. The petitioner highlighted the fact, that the approval of the Deputy Registrar, Co-operative Societies should not have been sought (by the Secretary of the Society), after the receipt of the petitioner's communication dated 28.2.1995.

16. Since, the petitioner was not communicated any determination, by the concerned authorities. She addressed a notice on 9.9.1995, calling upon the Secretary of the Society, to deliver the possession of the flat no. 5D, along with the share certificates, to her within seven days of the receipt of the said notice. On 21.11.1995, the Society denied all the allegations made by the petitioner against the Society (contained in the notice). On the claim of retransfer of the shares and flat made by the petitioner, the Society responded by asserting, that the shares had been transferred to the name of Kalpana Mukherjee, and on the basis thereof flat no. 5D also had been transferred in her name, thereupon, the Society did not have any legal authority to restore/retransfer the same to the name of the petitioner. On 19.12.1995, the Deputy Registrar, Co-operative Societies also informed Pratima Chowdhury, that the transfer of her shares and flat in favour of Kalpana Mukherjee had been completed, and since the Society had resolved on 2.4.1995 that it had no legal competence to cancel the same, nothing could be done in the matter.

17. Dissatisfied with the determination of the Co-operative Societies, as also, the denial of the consideration at the hands of the Deputy Registrar, Co-operative Societies, the petitioner filed Dispute Case No. 29/RCS of 1995-96. The aforesaid dispute case was adjudicated upon by D.K. Ghosh in his capacity as Arbitrator.

17(i) During the course of the above determination, Kalpana Mukherjee (who was impleaded as respondent no. 1) filed a reply on 22.2.1996 which deserves a special mention. Firstly, according to the reply filed by Kalpana Mukherjee flat no. 5D was purchased by Partha Mukherjee in the name of Kalpana Mukherjee (mother of Partha Mukherjee). The above flat was purchased for a total consideration of Rs. 4,29,000/-. The said consideration was paid by way of transfer of shares, in the name of Partha Mukherjee to the name of Pratima Chowdhury. Highlighting the above factual position is important because the entire paper work pertaining to the transfer of flat no. 5D, from the name of Pratima Chowdhury to the name of Kalpana Mukherjee indicates, that the above transfer was without any monetary consideration, whereas stands adopted by Kalpana Mukherjee was that as a matter of fact the said transfer was on a consideration of Rs. 4,29,000/-. Secondly, according to Kalpana Mukherjee (respondent no. 1), Pratima Chowdhury's letter dated 28.2.1995 was afterthought. It is therefore, that Kalpana Mukherjee in her reply emphasized that the letter dated 28.2.1995, was only a scheme devised by Pratima Chowdhury to wriggle out of the transaction.

17(ii) The Secretary of the Society filed separate written reply to the case filed by Pratima Chowdhury. In its reply the Society supported the transfer of shares, as also, the transfer of flat no. 5D to the name of Kalpana Mukherjee. The Society clearly brought out in their reply, that Pratima Chowdhury through her letter dated 29.6.1992 had informed the Society, that Kalpana Mukherjee

was in occupation of the flat, and as such, maintenance charges for the flat should be recovered from her. Furthermore, according to the Society, the transfer of the shares, as also, of flat no. 5D to the name of Kalpana Mukherjee was approved at the request of Pratima Chowdhury, made through her letter dated 11.11.1992. It was submitted, that the aforesaid request was considered by the Department of Co-operative Societies, which approved the resignation of Pratima Chowdhury and the consequential transfer of membership vide Resolution of the Board of Directors of the Society dated 14.2.1993. The above resolution had been forwarded by the Secretary of the Society, to the Deputy Registrar, Co- operative Societies (by letter dated 10.3.1993), for approval. It was pointed out that the Deputy Registrar, Co-operative Societies had approved the Resolution of Board of Directors of the Co-operative Societies on 13.3.1995. Additionally, it was pointed out, that after the approval of the change of membership to the name of Kalpana Mukherjee, the petitioner Pratima Chowdhury had required the Senior Commercial Executive of Calcutta Electric Supply Corporation, to transfer the electricity-supply meter of flat no. 5D to the name of Kalpana Mukherjee. According to the Society, the above facts clearly evidenced the unequivocal intention of Pratima Chowdhury to transfer her shares and flat no. 5D to the name of Kalpana Mukherjee, which was given due effect to by the Society after seeking the approval of the Deputy Registrar, Co-operative Societies. In view of the aforestated factual position, the Society denied the claim raised by Pratima Chowdhury in Dispute Case No. 29/RCS of 1995-96.

17(iii) It is also imperative to record herein, that Pratima Chowdhury had filed rejoinder, to the written statements filed on behalf of Kalpana Mukherjee and the Society before the Arbitrator. It was pointed out in the rejoinder, that Partha Mukherjee was married to Sova Mukherjee. Sova Mukherjee was the daughter of H.P. Roy and Bani Roy (sister of the petitioner, Pratima Chowdhury). On account of the above relationship she had treated Sova Mukherjee as her daughter and Partha Mukherjee as her son. Consequently on the transfer of Partha Mukherjee to Calcutta (from Bombay), she allowed him to reside in flat no. 5D. At the behest of Partha Mukherjee, his employer Colgate Palmolive (India) Limited entered into a lease agreement with Pratima Chowdhury on 9.3.1992. Under the lease agreement Pratima Chowdhury was entitled to rent at the rate of Rs. 5,000/- per month. The lease agreement was executed for a period of three years, with overriding condition, that the tenure of lease would coincide with the tenure of Partha Mukherjee at Calcutta, while in the employment of Colgate Palmolive (India) Limited. It was also pointed out, that Partha Mukherjee had opened a joint account along with petitioner Pratima Chowdhury, for the deposit of rent payable by Colgate Palmolive (India) Limited. It was also pointed out, that Partha Mukherjee singularly operated the aforesaid joint account. In his above capacity he encashed the rent deposited by Colgate Palmolive (India) Limited, without the knowledge and notice of the petitioner Pratima Chowdhury. She also asserted in the rejoinder, that she could obtain the details of the agreement executed with Colgate Palmolive (India) Limited, as also, the deposits of rent in her joint account with Partha Mukherjee, only after she had issued a letter to Colgate Palmolive (India) Limited, that she would not make any claim from the employer of Partha Mukherjee, on the basis of information supplied. In her rejoinder Pratima Chowdhury also asserted, that Partha Mukherjee had forced her to sign the letter dated 11.11.1992, without disclosing the contents thereof. The categoric stance adopted by Pratima Chowdhury in her rejoinder was, that she was not aware of the contents of letter dated 11.11.1992, and furthermore, Partha Mukherjee had obtain her signature on other blank papers as well, by falsely informing her that the papers would be used to explain his

stay in flat no. 5D. She also denied having executed the document dated 13.11.1992, which was allegedly notarized at Calcutta. In fact she denied her presence at Calcutta on 13.11.1992. She further stated, that Partha Mukherjee did not remain in employment of Colgate Palmolive (India) Limited after his transfer to Bombay. It was also pointed out by her, that on his return to Bombay, Partha Mukherjee started his independent business in aluminium products. For the said business Pratima Chowdhury claims to have advanced a loan of Rs.2 lakhs to Partha Mukherjee. The loan stated to have been extended to Partha Mukherjee was by way of a cheque drawn in favour of Bharat Aluminium Company, for the supply of raw material for the business of Partha Mukherjee. She further contended, that Partha Mukherjee also took loan of Rs. 1,50,000/- from Bani Roy (sister of the petitioner, Pratima Chowdhury). It was pointed out, that the share certificates held by Partha Mukherjee jointly with his wife Sova Mukherjee, were transferred to the petitioner Pratima Chowdhury and her sister Bani Roy during the year 1994, toward repayment of loans taken from them by Partha Mukherjee. The position accordingly adopted was, that the transfer of share certificates did not constitute consideration in lieu of the transfer of flat no. 5D to Kalpana Mukherjee. A categorical assertion was made by the petitioner Pratima Chowdhury in her rejoinder, that on 30.11.1992 Partha Mukherjee had no company shares either in his own name or in the name of his wife Sova Mukherjee (nor in the joint names of the husband and wife). Accordingly, the plea raised by Kalpana Mukherjee in her reply (to the dispute case filed by the petitioner Pratima Chowdhury) was that the transfer transaction was for consideration, and that, the payment of consideration made by transfer of shares from the name of Partha Mukherjee to the name of Pratima Chowdhury, was false. Pratima Chowdhury also denied, that she had addressed a letter dated 23.4.1993 to the Senior Commercial Executive of the Calcutta Electric Supply Corporation (South Region Office). She disputed even her signatures on the above letter, and further asserted, that she had filed a first information report at the Gariahat Police Station, Kolkata. On the basis of the factual position noticed hereinabove, the petitioner Pratima Chowdhury reiterated, that she had neither surrendered, nor resigned from the membership of the Society, nor had she sought the transfer of flat no. 5D from her name to the name of Kalpana Mukherjee.

18. Before the Arbitrator, the petitioner examined three witnesses. She examined herself as PW1, she examined Vani Ganapati as PW2 and H.P. Roy as PW3. H.P. Roy PW3 (is married to Bani Roy, the sister of the petitioner Pratima Chowdhury) is the father-in-law of Partha Mukherjee. Kalpana Mukherjee examined four witnesses in her defence. She examined herself as DW1, Partha Mukherjee her son was examined as DW2, the Secretary of the Society was examined as DW3 and S.N. Chatterjee, Advocate, who had notarized the documents referred to above, was examined as DW4.

19. In the process of adjudicating upon the matter, the Arbitrator framed six issues of fact, and seven issues of law. The same are being extracted hereunder:

“QUESTIONS OF FACT INVOLVED

- i) Whether the Plaintiff tendered resignation on 11.11.92 from the membership of the Society or not.

ii) Was the document executed on 13.11.92 a deed of transfer of flat or an agreement for transfer of flat.

iii) Whether consideration money was paid by the Defendant no. 1 to the plaintiff or not.

iv) Whether the payment of consideration money by way of transfer of shares of companies can be treated as valid payment of consideration money or not.

v) Whether the Defendant no. 2 accepted the admission of the membership of the Defendant no. 1 on 14.2.93 or

vi) Whether the flat in question was encumbered due to existence of lease and license agreement at the material point of time i.e. on 11.11.92 or on 13.11.92.

“QUESTIONS OF LAW INVOLVED

i) Whether the instant dispute is barred by law of limitation.

ii) Whether sub-section 9 of section 85 of West Bengal Co-

Operative Societies Act, 1983 was followed in case of transfer of flat in question of the plaintiff.

iii) Whether section 69 and 70 of the West Bengal Co-Operative Societies Act 1983 were followed in respect of admission of membership of the Defendant no. 1.

iv) Whether Rules 135(3) (a) and 142(1) of West Bengal Co-

Operative Societies Rules 1987 were obeyed or not.

v) Whether Rule 127(1) of West Bengal Co-Operative Societies Rules 1987 was obeyed in case of nomination or not.

vi) Whether the disputed transfer of flat contradicted the relevant provisions of the Bye-laws of the Defendant Society or not.

vii) The Doctrine of estoppel as per sections 115 & 116 of the Evidence Act 1872 whether attracted or not.”

20. It is necessary for us to briefly record the factual as also the legal conclusions drawn by the Arbitrator in his order dated 5.2.1999, while disposing of the disputes raised by Pratima Chowdhury. Accordingly we are summarizing the same hereunder:-

(i) In respect of the letter dated 11.11.1992, the Arbitrator observed that the same was drafted by Partha Mukherjee. This inference came to be drawn from the manuscript of the original. The Arbitrator pointed out that the letter dated 11.11.1992, disclosed that the transaction was not based on passing of monetary consideration, whereas, Kalpana Mukherjee had expressly asserted in her defence, that the transaction was executed on an agreed consideration of Rs. 4,29,000/-. Kalpana Mukherjee had also affirmed, that the aforesaid consideration had passed from the transferee to the transferor by transfer of shares of Partha Mukherjee, to the name of Pratima Chowdhury. The Arbitrator relying on the contents of the letter dated 11.11.1992, recorded that the letter itself mentioned that the details disclosed therein, were meant purely to comply with the rules and to avoid future complications. The Arbitrator felt, that if Pratima Chowdhury had the intention to sell the flat, she would have mentioned the same in her letter dated 11.11.1992. It was also observed by the Arbitrator, that there was no justification for not mentioning the monetary consideration in the said letter. On the instant aspect of the matter the Arbitrator was of the view, that the disclosure of the above consideration would have clearly avoided future complications (which seem to be the intention for writing the letter dated 11.11.1992). The Arbitrator also pointed out, that the letter dated 11.11.1992 could not be treated as a letter of resignation of the petitioner Pratima Chowdhury from the Society. In this behalf it was noticed, that the word “resignation” was completely absent from the text of the letter dated 11.11.1992.

(ii) In respect of letter dated 13.11.1992 the Arbitrator pointed out, that the same was notarized by S.N. Chatterjee, Advocate, who was the son- in-law of the sister of Kalpana Mukherjee (defendant No. 1, before the Arbitrator). Although, the above notary stated that the letter dated 13.11.1992 was signed by all the parties concerned before him at Calcutta, he acknowledged, that he did not issue any notarian certificate in terms of Section 8 of the Notary Act. According to the Arbitrator, Pratima Chowdhury and all the witnesses appearing for her, had unequivocally and categorically affirmed, that she (Pratima Chowdhury) was in Bombay on 11.11.1992, as also, on 13.11.1992. Therefore, according to the Arbitrator, the question of her appearing before the notary at Calcutta on 13.11.1992, did not arise at all. According to the Arbitrator, the registration number of the Society had not been mentioned in the document dated 13.11.1992, this according to the Arbitrator, made the document suspicious because Anil Kumar Sil, the Secretary of the Society, had mentioned that the above document dated 13.11.1992 was executed at his residence. If the above factual position was correct, according to the Arbitrator, the registration number would have been supplied by the Secretary of the Society, and would have been mentioned in the document itself. Furthermore, according to the Arbitrator, the document dated 13.11.1992 was in the nature of deed of transfer, but such transfer would materialize after (and not before) the consent of the Board of Directors of the Society, and the approval of the Deputy Registrar, Co-operative Societies. As per the Arbitrator, even the first step towards transfer of flat no. 5D had not commenced on 13.11.1992, and therefore, the question of allotment and handing over the possession of the flat to the nominee Kalpana Mukherjee, in accordance with the terms and conditions of the allotment and bye-laws of the Society did not arise either in law or in fact, as has been wrongly stated in the said document dated 13.11.1992. As per the Arbitrator even the document dated 13.11.1992 was silent on the consideration for such transfer, despite Kalpana Mukherjee expressing that the above transfer was for a sale consideration of Rs. 4,29,000/-. According to the Arbitrator, the possession of Kalpana Mukherjee, was through Partha Mukherjee, because of the lease and license agreement between Pratima

Chowdhury and Colgate Palmolive (India) Limited (which commenced on 1.4.1992 and was terminated on 19.10.1993), and not on the basis of the document dated 13.11.1992. The Arbitrator also pointed out, that Kalpana Mukherjee had deposited rent in the account of Pratima Chowdhury on 21.10.1993, describing it as rent payable to Pratima Chowdhury. The Arbitrator further observed that Pratha Mukherjee in his letter dated 28.10.1993 mentioned Pratima Chowdhury as the landlady of flat no. 5D. Based on the above two instances of 21.10.1993 and 28.10.1993, the Arbitrator was of the view, that the assertion of transfer of flat no. 5D by Pratima Chowdhury to Kalpana Mukherjee stood clearly annihilated.

(iii) On the issue of the consideration money, the Arbitrator noted, that Kalpana Mukherjee had stated in her defence, that the parties had orally settled the passing of consideration in lieu of flat no. 5D, at Rs.4,29,000/-. It was also her contention, that the parties had settled that the above agreed consideration would be paid by Partha Mukherjee to Pratima Chowdhury by transferring his shares in different companies to the name of Pratima Chowdhury. But Pratima Chowdhury categorically denied the passing of any consideration, as she had no intention to sell the property. She also asserted, that the shares shown to have been transferred from the name of Partha Mukherjee to the name of Pratima Chowdhury, were acquired by Partha Mukherjee long after November, 1992 (when the letters dated 11.11.1992 and 13.11.1992 were issued) i.e. from August, 1993 to April, 1994. The details of the transfer of shares was disclosed in the award passed by the Arbitrator as under:-

“COMPANY’S NAME NO. OF SHARES ACQUIRED Tata Chemicals Ltd. 50 nos. 8.9.93 Tata Chemicals Ltd. 450 nos. 27.10.93 Siemens 50 nos. 2.8.93 Indian Aluminium 500 nos. 4.3.94 I.T.C. Hotels 100 nos. acquired with Mr. H.P. Roy 4.4.94” The above shares were acquired by Partha Mukherjee jointly, either with his wife or with his father-in-law, long after the material point of time.

Pratima Chowdhury’s assertion before the Arbitrator, questioning truthfulness of the assertion of Kalpana Mukherjee, was also based on the fact that, Kalpana Mukherjee (or Partha Mukherjee) could not have agreed to transfer to Pratima Chowdhury, what they did not themselves hold when the transaction was allegedly executed. In order to falsify the contention of Kalpana Mukherjee (and Partha Mukherjee) that consideration was paid to Pratima Chowdhury by transfer of shares as noticed above, it was stated that after Partha Mukherjee was transferred from Calcutta to Bombay in the year 1993, he did not continue with his employment with Colgate Palmolive (India) Limited, as he wanted to start a business of aluminium products with one R.K. Sen in Bombay. Keeping in view the above objective, Partha Mukherjee took a loan of Rs. 2 lakhs from Pratima Chowdhury. The above loan was extended by Pratima Chowdhury by way of cheques drawn in favour of Bharat Aluminium Company Limited for supply of raw materials for Partha Mukherjee’s business. It was further contended that Partha Mukherjee similarly took a loan of Rs. 2 lakhs from his own wife Sova Mukherjee which was repaid by Partha Mukherjee through cheques (bearing nos. 021865, 021866 and 021867) drawn on the Bank of Baroda. It was further pointed that Partha Mukherjee had similarly taken a loan for a sum of Rs.1.5 lakhs for the same purpose from Bani Roy (his mother-in-law) which he had still not repaid. It was pointed out, that at the asking of H.P. Roy (his own father- in-law, father of Sova Mukherjee) Partha Mukherjee had transferred share certificates

standing in his name, and in the name of his wife Sova Mukherjee, to the name of Pratima Chowdhury, towards repayment of the abovementioned loans. Accordingly, the case of Pratima Chowdhury was, that transfer of shares by Partha Mukherjee to the name of Pratima Chowdhury, was for a completely different transaction, and had nothing to do with the allowing of the usage and occupation of the flat, by Kalpana Mukherjee and Partha Mukherjee.

(iv) On the lease and license agreement the Arbitrator noticed, that Partha Mukherjee (son of Kalpana Mukherjee), and son-in-law of Pratima Chowdhury's sister Bani Roy, was allowed to reside in flat no. 5D, consequent upon his transfer from Bombay to Calcutta (while in the employment of Colgate Palmolive (India) Limited). It was also noticed, that the lease and license agreement, was executed by Colgate Palmolive (India) Limited, at the instance of Partha Mukherjee, for a monetary consideration of Rs. 5,000/- per month, as rent payable to Pratima Chowdhury. To deposit the above consideration Partha Mukherjee opened a joint account in the names of Pratima Chowdhury and himself. The Arbitrator noted, that when Partha Mukherjee drafted the letter dated 11.11.1992, he utterly neglected to mention the subsisting lease and license agreement between Colgate Palmolive (India) Limited and Pratima Chowdhury. The Arbitrator also noticed, that Kalpana Mukherjee did not inform Colgate Palmolive (India) Limited that flat no. 5D had been transferred from the name of Pratima Chowdhury to her name. On the contrary the Arbitrator pointed out, that Kalpana Mukherjee on 21.10.1993, deposited rent in the account of Pratima Chowdhury, by filing the bank deposit slips. Furthermore, the Arbitrator noticed, that Partha Mukherjee in his letter dated 28.10.1993 mentioned, that Pratima Chowdhury as the landlady of flat no. 5D. According to the Arbitrator, the above factual position clearly indicates, that Kalpana Mukherjee along with her son Partha Mukherjee were aware, that flat no. 5D belonged to the petitioner, even on 21/28.10.1993. Whereas, they wrongly depicted the transfer thereof from the name of Pratima Chowdhury to the name of Kalpana Mukherjee through letter dated 11.11.1992 and 13.11.1992. Since the lease and license agreement between Colgate Palmolive (India) Limited and Pratima Chowdhury continued from 1.4.1992 to 19.10.1993, there was no question of handing over of possession thereof by Pratima Chowdhury to Kalpana Mukherjee.

(v) On the submissions advanced on behalf of Pratima Chowdhury in respect of one covered garage space on the premises of the Society is concerned, the Arbitrator concluded from the documents submitted by Kalpana Mukherjee, that Pratima Chowdhury had one covered garage space also. The said covered garage space was not mentioned in the document dated 13.11.1992. Thereafter, based on an agreement executed between Kalpana Mukherjee on the one hand and the Society on the other, the said garage space was also transferred to the name of Kalpana Mukherjee on 25.4.1995. According to the Arbitrator, the instant agreement dated 25.4.1995, had no validity as the same was neither mentioned in the letter dated 11.11.1992, nor in the document dated 13.11.1992. And therefore cannot be considered as having the approval of Pratima Chowdhury. Accordingly, the Arbitrator expressed the view that the covered garage space must be deemed to have never been transferred by Pratima Chowdhury to Kalpana Mukherjee. The Arbitrator also concluded, that the agreement dated 25.4.1995 could not have been executed in the absence of Pratima Chowdhury. Based on the above factual position Pratima Chowdhury had also alleged connivance between Kalpana Mukherjee and the Society, so as to deprive Pratima Chowdhury of her property.

(vi) Besides the above factual conclusions drawn by the Arbitrator, the Arbitrator had also concluded that the Society violated various provisions of the West Bengal Co-operative Societies Act, 1983, and the rules framed thereunder, as also the bye-laws of the Society. The Arbitrator summarized the conclusions drawn on the legal issues as under:-

“Keeping in view of the all above, I am of the opinion that the transfer of the flat no. 5D of the Defendant No. 2 Society was not done in accordance with laws including West Bengal Co- Operative Societies Act, Rules, Indian Contract Act, Transfer of Property Act due to reason at a glance.

1) Section 85(9), Section 70, Section 69 of West Bengal Co-

Operative Societies Act 1983 have been flouted.

2) Rule 127(1), Rule 135(3)(a), Rule 142(1) have been flouted.

3) Bye-laws have been contradicted.

4) No consideration money was paid by the Defendant no. 1 to the Plaintiff.

5) Societies accepted the resignation of the Plaintiff on

14.2.93 which she had not tendered, if that be so, the society did not act as per Rule 143 also.

6) The flat in dispute was under the lease and license agreement at the material time since bank account in this respect was operated by the son of the Defendant no. 1 who also deposited cheque on Plaintiff's behalf.

7) The instant dispute case is not barred by limitation.

8) The transaction of 13.11.92 does not attract the doctrine of estoppel.”

21. Based on the abovementioned conclusions drawn by the Arbitrator on the factual and legal issues canvassed by the rival parties. The Arbitrator passed the following award:

“AWARD Keeping in view of the above, based on documents, assessing all the pros and cons, on the basis of equity, justice and good conscience, I pass the following ‘AWARD’:

a) The agreement dt. 13.11.92 between the Plaintiff and Defendant no. 1 is invalid, void and incomplete and

b) The relevant resolution dt. 14.2.93 (Agenda no. 1) of the Managing Committee of the Defendant no. 2 is quashed and;

c) The Defendant no. 2 is directed to ensure and conform that the plaintiff gets the possession of flat no. 5D with garage space with immediate effect and issue share certificate in her name immediately and

d) Any other action if any taken by any authority on and after 13.11.92 affecting the membership of the Plaintiff in any manner whatever is also quashed.

The above Judgment and Award have been given on Pronouncement before the parties present.”

22. Dissatisfied with the award rendered by the Tribunal on 5.2.1999, Kalpana Mukherjee preferred an appeal bearing no. 14 of 1999 before the West Bengal Co-operative Tribunal (hereinafter referred to as the Co-operative Tribunal). The Society (defendant no. 2, before the Arbitrator) preferred a separate appeal bearing no. 29 of 1999, to assail the award of the Arbitrator dated 5.2.1999. While dwelling upon the controversy between the parties, the Co-operative Tribunal considered it appropriate to highlight the social relationship and affinity between the parties. According to the Cooperative Tribunal, the relationship between the parties had an essential bearing, to an effective determination of the controversy. Insofar as the instant aspect of the matter is concerned, rather than re-narrating the position taken into consideration, we consider it more appropriate to extract hereunder the narration recorded by the Co-operative Tribunal itself. The same is accordingly reproduced hereunder:-

“For proper appreciate of evidence it is proper to introduce the parties. P.W. Chowdhury, the respondent no. 1 in both the appeals is a spinster and now aged 50+. She is a graduate. She studies in Calcutta and other places. She is an exponent to Bharat Natyam and performs dance at many places of India. For a pretty long time she has been residing at Bombay. Smt. Bani Roy is her sister. B. Roy’s husband Mr. H.P. Roy is a wealthy person in Bombay. P. Chowdhury has been living in the family of Mr. H.P. Roy since she put up herself in Bombay. Partha Mukherjee is the son-in-law of H.P. Roy. K. Mukherjee who is the appellant in appeal no. 14/1999 is the mother of Partha Mukherjee. K. Mukherjee retired from service in the National Library, Calcutta in 1994. While in service, she would stay in the Govt. accommodation at Balvediare Road, Alipur. Partha Mukherjee, Son of K. Mukherjee is an Engineer from I.I.T., Kharagpur and obtained M.B.A. from Ahmedabad and at the material time worked as Sales Manager/Regional Manager of Colgate Palmolive Ltd. in Bombay, Calcutta and other places. Partha Mukherjee married Sova Mukherjee, who was the daughter of H.P. Roy of Bombay. P. Chowdhury, her sister Bani, H.P. Roy, Partha and Sova, all lived together for a prolonged period of time in the house of H.P. Roy at Bombay. Partha married Sova sometimes in 1987 and little after marriage, he and Sova started living in the house of H.P. Roy. Evidence has it to say that the relationship of Pratima with Sova Rinki is, as Pratima herself says, “like

my daughter”. Similarly, the evidence of Pratima runs that after marriage, her relationship with Partha was “like my son”. In 1992, Partha worked for Palmolive Co. Ltd. in Bombay and while working there he, as we have earlier observed, would stay in the house of H.P. Roy. In January, 1992, Pratima was allotted a flat being no. 5B at 48E, Gariahat Road, Calcutta-19 belonging to the society. The said flat was originally allotted to Smt. Indrani Bhattacharya and the said Smt. Indrani Bhattacharya having transferred the flat to Smt. P. Chowdhury, the latter came to be an allottee of that flat, but P. Chowdhury did not reside there at all. In March/April, 1992, Partha was transferred from Bombay to Calcutta and needed an accommodation. Colgate Palmolive Co. Ltd., was required to arrange accommodation for its officers. As Pratima and Partha became very closer and Pratima treated Partha like her son, Partha put up himself in the flat of Pratima in April, 1992 and it was the Colgate Palmolive Co. Ltd., which by virtue of an agreement for license with Pratima used to pay Rs.5000/- per month as rent to Pratima. These are all facts admitted.

We see that the relationship amongst Pratima, Partha and Kalpana grew very closer because of Partha marrying the daughter of the sister of Pratima. This background has to be borne in mind while appreciating the evidence on record.” Having traced the relationship between the parties, as has been recorded hereinabove, the Co-operative Tribunal was of the view, that the entire approach of the Arbitrator was erroneous, as the Arbitrator had treated Pratima Chowdhury as a pardanashin lady. The above inference, drawn by the Co-operative Tribunal, is also being extracted hereunder:-

“The entire approach of the Ld. Arbitrator seemed to have gone into the fashion as if the respondent no. 1 P. Chowdhury was a pardanasin lady, that she was unaware of the documents she was executing that it was Partha who managed to get all the documents executed by Pratima so as to obtain transfer of the flat in the name of his mother Kalpana Mukherjee. Let it be recorded here at the outset that P. Chowdhury, having regard to her status, education and wealth cannot be allowed to take the benefit of what a pardanasin woman is entitled to on two-fold grounds; firstly, she is highly education (illegible) and a literate woman and secondly, the pleading of Pratima Chowdhury as we get from plaint does not make out such a case.” Just in the manner in which we have recorded the conclusions drawn by the Co-operative Arbitrator, highlighting each individual aspect taken into consideration, we will also endeavour to similarly summarize the conclusions drawn by the Co-operative Tribunal on different aspects of the matter. The above conclusions are being recorded hereunder:-

i) The Co-operative Tribunal was of the view, that the determination rendered by the Arbitrator was erroneous on account of the fact that the Arbitrator did not take into consideration a letter of vital importance to the controversy. In this behalf, the Co-operative Tribunal examined the letter dated 29.6.1992, which Pratima Chowdhury had written to the Society, wherein she had indicated that due to her indifferent health, she was not in a position to visit Calcutta in the immediate future. She accordingly requested the Society to transfer her flat to “my nominee Kalpana Mukherjee, a close relative of mine”. In the above letter Pratima Chowdhury had also stated, that Kalpana Mukherjee

was already occupying the flat, and was staying in it with her son (Partha Mukherjee), and her daughter-in-law (Sova Mukherjee). She accordingly requested the Society, that for the maintenance of the flat, charges payable should be recovered from the residents of the flat. It would be relevant to mention, that Pratima Chowdhury had accepted having written the above letter (in the rejoinder filed by her before the Arbitrator). Despite the above Pratima Chowdhury had explained, that the letter dated 29.6.1992 had been signed by her at the instance of Partha Mukherjee. According to the Co-operative Tribunal, the above letter dated 29.6.1992 written by Pratima Chowdhury on her letterhead from Bombay, demolished the entire case set up by her. Primarily on the basis of the said letter dated 29.6.1992 the Co-operative Tribunal concluded, that the factual inferences recorded by the Arbitrator without reference to the above letter, were not justified. It came to be expressly concluded by the Co-operative Tribunal, that motives attributed to Partha Mukherjee were clearly unjustified.

ii) According to the Co-operative Tribunal, after having written the above letter dated 29.6.1992, Pratima Chowdhury wrote two other letters dated 11.11.1992 and 13.11.1992. On the basis of the above letters, flat no. 5D was transferred by the Society, to the name of Kalpana Mukherjee, consequent upon the approval of the Deputy Registrar, Co- operative Societies. In the opinion of the Co-operative Tribunal, Pratima Chowdhury did not assail the action of the Society in transferring flat no. 5D to Kalpana Mukherjee till February, 1995. According to the Co-operative Tribunal, the challenge to the transfer of the above flat in the name of Kalpana Mukherjee, was raised only after a marital discord had developed between Partha Mukherjee and his wife Sova Mukherjee. On account of the above discord, Partha Mukhrjee left the company of the family of his father-in-law (H.P. Roy). It was only thereupon, that Pratima Chowdhury assailed the transfer of the flat (from her name, to the name of Kalpana Mukherjee). According to the Co-operative Tribunal, the Arbitrator overlooked the above extremely relevant factual position and accordingly erred in drawing his conclusions.

iii) Insofar as the document dated 13.11.1992 is concerned, the Co-

operative Tribunal having examined it, recorded that the same was executed by Pratima Chowdhury and Kalpana Mukherjee (both as executants), which was attested by H.P. Roy (father-in-law of Partha Mukherjee) and which was also sworn before a notary. The Co-operative Tribunal also observed, that the aforesaid document had been executed on a non-judicial stamp paper of Rs.40/-. The above document in its text recorded, that Pratima Chowdhury had transferred the possession, right, title and interest of flat no. 5D in favour of Kalpana Mukherjee (the nominee/transferee). The reason for the aforesaid transfer was indicated in document dated 29.6.1992. It was mentioned, that on account of her (Pratima Chowdhury's) indifferent health and on account of having decided to permanently settle in Bombay, she had agreed to transfer the flat no. 5D in favour of Kalpana Mukherjee. It was also duly recorded in the above document, that possession of flat no. 5D had already been handed over to Kalpana Mukhrjee. It was also pointed out, that Kalpana Mukherjee had already applied for membership of the Society, whereafter, she would be entitled to all rights and privileges over flat no. 5D in terms of the bye-laws of the Society. According to the Co-operative Tribunal, Pratima Chowdhury did not deny execution of document

dated 13.11.1992. As per the Co-operative Tribunal, the submission of Pratima Chowdhury about having signed a blank paper, on which Partha Mukherjee had executed the document dated 13.11.1992, was not acceptable. The Co-operative Tribunal was of the view, that Pratima Chowdhury having admitted her signatures on the document dated 13.11.1992, it was not open to her to deny the execution thereof. For the same reason, the Co-operative Tribunal rejected the contention advanced on behalf of Pratima Chowdhury, that she had never appeared before the notary at Calcutta because she had never gone to Calcutta during the period when the documents dated 11.11.1992 and 13.11.1992 were executed. The Co-operative Tribunal felt compelled to record the aforesaid conclusion in the following words: "Regardless of whether the document called agreement dated 13.11.1992 is legal or not, the fact remains that the document was executed by the transferor and the transferee, and it could not be denied that long before the agreement was executed, possession of the flat was delivered way back in March, 1992." Therefore, all the findings recorded by the Arbitrator in respect of the document dated 13.11.1992 were not accepted for the above reasons.

iv) While dealing with the documents dated 29.6.1992, 11.11.1992 and 13.11.1992, the Co-operative Tribunal expressed disbelief at the determination of the Arbitrator to the effect, that Pratima Chowdhury had no intention to transfer her membership and her flat bearing no. 5D to Kalpana Mukherjee. According to the Co-operative Tribunal, the question whether monetary consideration passed from Kalpana Mukherjee to Pratima Chowdhury or not, was a different issue, however, the letters dated 29.6.1992, 11.11.1992 and 13.11.1992 clearly expressed the intention of Pratima Chowdhury to transfer flat no. 5D in favour of her nominee Kalpana Mukherjee. The Co-operative Tribunal was also of the view, that the Arbitrator was unjustified in observing, that the above letters were drafted by Partha Mukherjee, or that, Partha Mukherjee prevailed over Kalpana Mukherjee to execute the above letters. According to the Co-operative Tribunal, neither the evidence available on the records of the case, nor the circumstances of the case justified any such inference.

v) While dealing with the issue of consideration, which had passed from Kalpana Mukherjee to Pratima Chowdhury on account of transfer of flat no. 5D, the Co-operative Tribunal expressed, that the Arbitrator appeared to have been of the view that since in the letter dated 11.11.1992 it was stated, that no monetary transaction was involved, there could be no sale, and consequently, when there was no sale, there could be no transfer. The Co-operative Tribunal expressed the view, that sale was not the only mode of transfer. Relying on the letter dated 11.11.1992 the Co-operative Tribunal felt, that it could not be conclusively held, that Pratima Chowdhury had no intention to transfer flat no. 5D in the name of Kalpana Mukherjee. In fact, according to the Co-operative Tribunal, the issue of passing of consideration and the issue of transfer of the property were two independent issues. The said issues, according to the Tribunal, had to be determined as per the totality of the circumstances of the case. On the instant aspect of the matter the Co-operative Tribunal expressed the view, that the rival parties were tied up by a matrimonial relationship, inasmuch as, the niece (Sova Mukherjee) of Pratima Chowdhury was the cementing factor, of their relationship. Accordingly, whether or not consideration had passed between the parties, could not be considered as a decisive factor. In fact, the Co-operative Tribunal was pleased to further

conclude, “Even assuming for the sake of argument that no monetary transaction was involved, the factum of transfer is not abrogated thereby”. According to the Co-operative Tribunal, the provisions of the West Bengal Co-operative Societies Act, and the Rules framed thereunder, do not mandate, that transfer could only be made by way of sale. Keeping in view the closeness of the relationship, which has existed between the parties, according to the Co-operative Tribunal, the issue of paramount importance was not the receipt of monetary consideration, the issue of paramount importance was only “... to accommodate the plaintiff’s niece Sova and her husband Partha, that was uppermost in the mind of the plaintiff...” Referring to the facts of the present case, the Co-operative Tribunal held, that consistent with the case of Pratima Chowdhury based on an oral agreement, Partha Mukherjee transferred shares of different companies “... worth Rs.4,29,000/- in favour of the plaintiff on 6.12.1994 by way of consideration of the apartment...”. It is necessary to notice the observations made by the Co-operative Tribunal on the instant aspect of the matter. The same are accordingly reproduced in the words of the Co-operative Tribunal: “One may not believe the reality of oral agreement so as to determine the price and of payment thereto by transfer of shares of different companies in favour of the respondent no. 1. But if it appears from the documents which show that in the latter part of the year 1994, shares worth Rs.4,29,000/- were transferred in favour of P. Chowdhury and if no convincing evidence is forthcoming as to payment of that money for different purpose or for different reason then one is to believe the passing of consideration price, and the passing of consideration price when proved would virtually prove the alleged oral agreement to that effect.”

vi) The Co-operative Tribunal also examined the rival contentions of the parties in respect of the place where the documents in question were executed. It was pointed out, that the evidence produced by Pratima Chowdhury to the effect, that she had signed the documents in Bombay, could not be accepted. Likewise, according to the Co-operative Tribunal, the witnesses produced by Pratima Chowdhury on the above issue, were not reliable. According to the Co-operative Tribunal, when the notary who was an Advocate stated on oath, that the documents were executed in Calcutta before him, it was not possible to give credence to the statement of Pratima Chowdhury or the witnesses produced by her. According to the Co-operative Tribunal, it needed to be kept in mind even, insofar as the instant aspect of the matter was concerned, that Pratima Chowdhury had raised a dispute in respect of the transfer of flat no. 5D only after a marital discord had developed between Partha Mukherjee and Sova Mukherjee.

vii) According to the Co-operative Tribunal “the question as to why Kalpana Mukherjee was not made a nominee in January, 1992 when she was put in possession of the flat, lies in the fact that since 1987, Kalpana Mukherjee’s son Partha Mukherjee had been residing in Bombay with his father in law H.P. Roy and Pratima Chowdhury. According to the Co-operative Tribunal, the Arbitrator recorded a useless reasoning, that the nomination in favour of Kalpana Mukherjee was not acceptable. Referring to Sections 79 and 80 of the West Bengal Co-Operative Societies Act, the Co-operative Tribunal expressed the view, that it was not compulsory that transfer of nomination could only be in favour of a member of the family of the person making the nomination. According to the Co-operative Tribunal, the letters/documents dated 29.6.1992, 11.11.1992 and 13.11.1992 were sufficient proof of the nomination by Pratima Chowdhury in favour of Kalpana Mukherjee. It was also pointed out, that the Society had accepted the above nomination, which was approved by the

Deputy Registrar, Co-Operative Societies. It was accordingly concluded by the Co-operative Tribunal, that in such a situation, no separate letter giving consent to the transfer was required.

viii) Another interesting aspect of the matter dealt with by the Co-

operative Tribunal was based on the principle of estoppel. Rather than expressing the observations and conclusions drawn by the Co- operative Tribunal in our words, we consider it just and appropriate to narrate the findings recorded by the Co-operative Tribunal by extracting its observations. The same are accordingly reproduced hereunder:-

“Section 115 of the Evidence Act provides that “when one person has by his declaration act or commission, intentionally causes or permits another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in the suit or proceeding between herself and such person or his representative shall be allowed in the suit or proceeding between herself and such person or his representation, to deny the truth of that thing”. The following facts are very much present to invoke the doctrine.

- a) Fraud, undue influence (illegible) and misrepresentation has not been proved;
- b) (illegible)
- c) (Illegible)
- d) Partha was in need of accommodation in Calcutta;
- e) Long before transfer Kalpana was already made a nominee in respect of the flat in question;
- f) Unquestionably two letters dated 19.6.1992 and 13.11.1992 are there addressed by Pratima to the society clearly asking for transfer of the flat in favour of Kalpana;
- g) Possession was delivered pursuant to those letters and agreement dated 13.11.1992;
- h) Lease and license agreement with Colgate Palmolive Ltd., legally cannot destroy the factum of transfer;
- i) Partha and Kalpana are led to believe about the completion of transfer;
- j) Under the law it (illegible) required to be executed and registered under the T.P. Act and the I.R. Act;

k) Pratima writes to CESC to henceforth collect all charges from Kalpana;

l) Pratima slept a slumber after the signing of the agreement dated 13.11.1992 till April, 1993.

These facts are to our mind sufficient to invoke the doctrine of estoppel. When society acted upon letters of the plaintiff/respondent no. 1 and transfer was effected, the respondent no. 1 is estopped from challenging her stand.”

ix) It was argued before the Co-operative Tribunal, that when the lease and license agreement came to an end, Partha Mukherjee wrote a letter to Colgate Palmolive India Limited informing it of the termination of the lease and license agreement by asserting, that “Landlady refunded back the security deposit of Rs.60,000/-“. Factually, Partha Mukherjee had deposited the above amount of Rs.60,000/-, in the Calcutta office of Colgate Palmolive (India) Limited. It was argued before the Co-operative Tribunal, that the use of the expression “landlady” by Partha Mukherjee, was indicative of the fact that the transfer of flat no. 5D had actually not taken place. According to the Co-operative Tribunal, the aforesaid argument was not acceptable because in the eyes of Colgate Palmolive (India) Limited, Pratima Chowdhury was a landlady and accordingly it was not required that Partha Mukherjee should inform Colgate Palmolive (India) Limited, that Pratima Chowdhury had transferred flat no. 5D to the name of his mother Kalpana Mukherjee.

Based on the aforesaid findings recorded by the Co-operative Tribunal, both the appeals were allowed. The impugned award passed by the Tribunal dated 5.2.1999 in Dispute Case No. 29/RCS of 1995-96 was set aside. Accordingly, the dispute raised by Pratima Chowdhury was dismissed.

23. Dissatisfied with the common order passed by the Co-operative Tribunal dated 16.5.2002, vide which Appeal nos. 14 of 1999 and 29 of 1999 were disposed of, the petitioner invoked the civil revisional jurisdiction of the High Court at Calcutta (hereinafter referred to as, the High Court). During the course of deliberations before the High Court, Pratima Chowdhury assailed the findings recorded by the Co-operative Tribunal on various aspects of the matter. The High Court in its deliberations traced the sequence of facts in the background of the facts as were examined by the Arbitrator, as also, the Co-operative Tribunal. No new facts were taken into consideration. The High Court adjudicated upon the matter vide an order dated 14.2.2006, whereby Civil Order nos. 3039 and 3040 of 2002 were jointly disposed of. The different perspectives and angles within the framework of which the High Court examined the controversy, are being briefly narrated hereunder:-

(i) The High Court excluded various facts taken into consideration by the Arbitrator. For excluding certain facts from consideration, the view of the High Court was, that the factual position introduced by Pratima Chowdhury by filing a rejoinder before the Arbitrator, could not be taken into consideration. The consideration of the High Court was recorded in the impugned order dated 14.2.2006, as under:-

“After service of copy of the written statement, the plaintiff before the learned Arbitrator filed a rejoinder thereby attempting to introduce certain facts. But the learned Tribunal observed that there could be no scope for filing of such rejoinder either under the Code of Civil Procedure or under the West Bengal Co-Operative Societies Rules.” In fact, on the instant aspect of the matter the High Court, adopted as correct the following observations recorded in the order passed by the Co-

operative Tribunal:-

“It has to be clearly stated that under no provision of law the plaintiff can be allowed to submit a rejoinder to the written statement of the defendant and the facts introduced in the rejoinder were illegally taken note of by the Ld. Arbitrator and whatever evidence she introduced to translate that rejoinder cannot be legally accepted.”

(ii) The High Court was of the view, that the stance adopted by Pratima Chowdhury was impermissible under the principle of justice and equity, the doctrine of fairness, as also, the doctrine of estoppel. This aspect of the matter came to be examined in the following manner:-

“After due consideration of all relevant facts and materials it appears that there could be very little scope for the society to recall its stand just because after about three years, Pratima Chowdhury decided otherwise. In fact resolution of the dated 14.2.1993 was forwarded to the Deputy Registrar, Co-operative Societies with recommendation for transfer of flat and shares in favour of Kalpana Mukherjee as far back as on 10.3.1993. It appears that the Deputy Registrar, Co-operative Societies, asked for certain document on 26.7.1993, which were submitted by the society on 22.9.1993. Thereafter, membership of Kalpana Mukherjee in place of Pratima Chowdhury was approved. Thus, backing out by Pratima Chowdhury after about three years of her own consistent request for transfer in favour of Kalpana Mukherjee and her request to C.E.S.C. to transfer electric meter, cannot have any support in the eyes of law. Pratima Chowdhury also did not bother to intimate Kalpana Mukherjee while requesting the society for necessary action in view of her change of mind. This is against the doctrine of fairness. Lord Denning in his book, *The Discipline of Law*, 7th Reprint, page 223, observed:

“It is a principle of justice and of equality. It comes to this, when a man by his words or conduct has led another to believe that he may safely act on the faith of them – and the other does act on when it would be unjust or inequitable for him to do so.” In the words of Dixon, J.:-

“The principle upon which estoppel in pais is founded is that the law should not permit an unjust departure by a party from an assumption of fact which he has caused another party to adopt or accept for the purpose of their legal relations.” The

said principle was further stretched to the following extent:-

“At any rate, it applies to an assumption of ownership or absence of ownership. This gives rise to what may be called proprietary estoppel. There are many cases where he is not the owner, or, at any rate, is not claiming an interest therein, or that there is no objection to what the other is doing. In such cases, it has been held repeatedly that the owner is not to be allowed to go back on what he has led the other to believe. So much so that his own title to the property, be it land or goods, has been held to limited or extinguished, and new rights and interest have been created therein.

And this operates by reason of his conduct what he was led the other to believe even though he never intended it.” It may be said that even in absence of actual promise, if a person by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights, knowing or intending that the other will act on that belief and he does so act, that again will raise an equity in favour of the other, and it is for a court to equity to say in what way the equity may be satisfied. An equity does not necessarily depend on agreement but on words or conduct. The Privy Council in V. Wellington Corporation observed that the Court must look at the circumstances in each case to decide in what way the equity can be satisfied.”

(iii) The High Court expressly approved the manner in which the controversy had been examined by the Co-operative Tribunal, by taking into consideration the past relationship between the parties, and the souring of the relationship between the two spouses, i.e., Partha Mukherjee and Sova Mukherjee. Having examined the dispute in the aforesaid prospective, the High Court observed as under:-

“On behalf of the petitioner it was also submitted that the learned Tribunal failed to appreciate the findings of the learned Arbitrator arrived at after proper appreciation of the evidence in the said proceeding. The learned Tribunal seem to be in agreement with the view that the document dated 13.11.1992 cannot be called as a proper and complete document of transfer. The learned Tribunal, thereafter explored as to whether such a document is at all necessary for effecting transfer of an apartment by a member to another person.

Relying upon the letters dated 29.6.1992 and 11.11.1992 and quite rightly, without attempting to read more than what meets the eyes, the learned Tribunal held that Pratima Chowdhury by such letters, expressed her desire to transfer the flat in favour of her nominee Kalpana Mukherjee. This was quite relevant in the context of relationship between two families arising out of the marital tie. It cannot be said that the learned Tribunal was not at all justified in observing that in the backdrop of the present case, payment of consideration could not be the decisive factor.”

(iv) On the subject of passing of consideration, the High Court principally accepted the view propounded by the Co-operative Tribunal. The High Court made the

following observations on the issue of consideration:-

“The learned Tribunal appears to have considered the aspect relating to transfer of flat in proper perspective. Nothing could be placed before this Court so as to justify brushing aside of the observation of the learned Tribunal that “neither the Act nor the rule rules out transfer by gift or will. But the Rule does not provide the manner of transfer, nor does it mandate that transfer has to be effected by any of the modes necessary as provided for in the Transfer of Property Act. The transferee has to be an allottee or a re-allottee.” On perusal of the impugned judgment, it is found that the learned Tribunal referring to Rule 201(3) of the West Bengal Co-

operative Societies Rule, 1974 and relevant Rule of 1987 observed that the question of payment of consideration money is primarily and purely a matter between the transferor and the transferee. It was held that “deletion of the Rule 201 (3) from the present Rule of 1987 clearly fortifies the position of the society which effected transfer on the repeated request of the respondent no. 1 in full compliance with the provisions of the Act and the Rules. This being so, for a transferee to hold possession is required the certificate of allotment, not a deed of conveyance from the transferor”. Significantly enough the learned Tribunal mentioned about the manner in which Pratima Chowdhury got the flat from the original member, Smt. Indrani Bhattacharya and wondered as to how then there could be any grievance in regard to the transfer by the said Pratima Chowdhury in favour of Kalpalan Mukherjee. The story of giving money to Partha Mukherjee by way of loan could not be established to the satisfaction of the judicial conscience of the learned Tribunal and for reasons as mentioned in the impugned judgment, the learned Tribunal did not choose to brush aside the assertions made on behalf of Kalpana Mukherjee that shares amounting to Rs.4,29,000/- were transferred in favour of Pratima Chowdhury. Controversy relating to alleged non-payment of consideration money, in the facts and circumstances of the present case, were not seen to have any legs, to stand upon.” Having recorded the aforesaid findings, the High Court in its conclusion recorded the following observations:-

“But, as observed earlier, the judgment and order under challenge does not seem to be suffering from any such infirmity or jurisdictional error, which calls for or justifies any interference by this Court.” Based on the analysis of the controversy in the manner summarized hereinabove, the High Court dismissed the challenge raised by Pratima Chowdhury by a common order dated 14.2.2006. The common order passed by the Co-operative Tribunal dated 16.5.2002, and the common order passed by the High Court dated 14.2.2006 were assailed by Pratima Chowdhury by filing Special Leave to Appeal (Civil) no. 15252 of 2006.

24. Leave granted.

25. The factual narration recorded by us, the circumstances taken into consideration by the Arbitrator, and the Co-operative Tribunal, as also, the analysis of the High Court have all been detailed hereinabove. Suffice it to state, that there were no further facts besides those already referred to hereinabove, which were brought to our notice during the course of hearing. It is also not necessary for us to record the submissions advanced at the hands of the learned counsel for the rival parties. All that needs to be mentioned is, that the same submissions as were put forward by the respective parties hitherto before, came to be addressed before this Court as well. We shall, therefore, venture to examine the veracity of the propositions advanced on behalf of the rival parties by compartmentalizing the submissions advanced before us under different principles of law. We would thereupon record our final conclusions.

26. First and foremost, it surprises us that Co-operative Tribunal, as also, the High Court excluded from consideration, the factual position expressed in the rejoinder filed by the appellant (before the Arbitrator). In excluding the aforesaid factual position, the Co-operative Tribunal and the High Court did not rely on any provision of law nor was any reliance placed on any principle accepted and recognized in legal jurisprudence. It is not a matter of dispute, that after Kalpana Mukherjee and the Society were permitted to file written replies before the Arbitrator, the rejoinder filed thereto on behalf of Pratima Chowdhury, was permitted to be taken on record. It is not in contention, that in the written replies filed before the Arbitrator, Kalpana Mukherjee had adopted *inter alia* the stance, that consideration was paid to Pratima Chowdhury in lieu of the transfer of flat no. 5D to her name, even though the documents relied upon by the rival parties, expressed otherwise. A number of documents not mentioned in the Dispute Case filed by Pratima Chowdhury were also relied upon by Kalpana Mukherjee. Pleadings between the parties could be considered as complete, only after Pratima Chowdhury was permitted to file a rejoinder (in case she desired to do so). She actually filed a rejoinder which was taken on record by the Arbitrator. Both parties were permitted to lead evidence, not only on the factual position emerging from the complaint filed by Pratima Chowdhury and the written replies filed in response thereto (by Kalpana Mukherjee, and the Society), but also, the factual position highlighted by Pratima Chowdhury in her rejoinder affidavit. It is, therefore, not on the basis of the pleadings of the parties, but also on the basis of the evidence led in support of the aforesaid pleadings, that the Arbitrator had recorded his findings in his award dated 5.2.1999. We are therefore of the view, that the Arbitrator had acted in accordance with law, and therefore the exclusion from consideration, of the factual position asserted by Pratima Chowdhury in her rejoinder, by the Co- operative Tribunal and the High Court was wholly unjustified. The factual narration by Pratima Chowdhury, could not be excluded from consideration, while adjudicating upon the rival claims between Pratima Chowdhury and Kalpana Mukherjee. The instant aspect of the decision of the High Court, is therefore liable to be set aside, and is accordingly set aside. Just the instant determination, would result in a whole lot of facts which were not taken into consideration by the adjudicating authorities, becoming relevant. Despite that, we feel, that remanding the matter for a *denovo* consideration, would place a further burden on the parties. Having heard learned counsel at great length, we shall settle the issues finally, here and now.

27. The Co-operative Tribunal in its order dated 16.5.2002 had invoked the principle of estoppel, postulated in Section 115 of the Indian Evidence Act. The High Court affirmed the conclusions drawn by the Co-operative Tribunal. In addition to the above principle, the High Court invoked the

principles of equity and fairness. Insofar as the latter principles are concerned, we shall delve upon them after examining the contentions of the rival parties, as equity and fairness would depend upon the entirety and totality of the facts. The above aspect can therefore only be determined after dealing with the intricacies of the factual circumstances involved. We shall, however, endeavour to deal with the principle of estoppel, so as to figure whether, the rule contained in Section 115 of the Indian Evidence Act could have been invoked, in the facts and circumstances of the present case. Section 115 of the Indian Evidence Act is being extracted hereinabove:-

“115. Estoppel.- When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.” It needs to be understood, that the rule of estoppel is a doctrine based on fairness. It postulates, the exclusion of, the truth of the matter. All, for the sake of fairness. A perusal of the above provision reveals four salient pre conditions before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering of position, should be such, that it would be iniquitous to require him to revert back to the original position. Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position. In our considered view, none of the ingredients of principle of estoppel contained in Section 115 of the Indian Evidence Act, can be stated to have been satisfied, in the facts and circumstances of this case. Herein, the first party has made no representation. The second party has therefore not accepted any representation made to her. Furthermore, the second party has not acted in any manner, nor has the second party altered its position. Therefore, the question whether the restoration of the original position would be iniquitous or unfair does not arise at all. Even if consideration had passed from Kalpana Mukherjee to Pratima Chowdhury, on the basis of the representation made by Pratima Chowdhury, we could have accepted that Kalpana Mukherjee had altered her position. In the facts as they have been presented by the rival parties, especially in the background of the order passed by the Arbitrator, that no consideration had passed in lieu of the transfer of the flat, and especially in the background of the factual finding recorded by the Co-operative Tribunal and the High Court, that passing of consideration in the present controversy was inconsequential, we have no hesitation whatsoever in concluding, that the principle of estoppel relied upon by the Co-operative Tribunal and the High Court, could not have been invoked, to the detriment of Pratima Chowdhury, in the facts and circumstances of the present case. Insofar as the instant aspect of the matter is concerned, the legal position declared by this Court fully supports the conclusion drawn by us hereinabove. In this behalf, reference may be made, firstly, to the judgment rendered by this Court in *Kasinka Trading vs. Union of India*, (1995) 1 SCC

274, wherein this Court noticed as under:-

“11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties.” (emphasis is ours) The above sentiment recorded in respect of the principle of estoppel was noticed again by this Court in *Monnet Ispat & Energy Ltd. vs. Union of India & Ors.*, (2012) 11 SCC 1, wherein this Court expressed its views in respect of the principle of estoppel as under:-

“289. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice.” (emphasis is ours) The ingredients of the doctrine of estoppel in the manner expressed above were also projected in *H.S. Basavaraj (D) by his LRs. & Anr. Vs. Canara Bank & Ors.*, (2010) 12 SCC 458, as under:-

“30. In general words, estoppel is a principle applicable when one person induces another or intentionally causes the other person to believe something to be true and to act upon such belief as to change his/her position. In such a case, the former shall be estopped from going back on the word given. The principle of estoppel is, however, only applicable in cases where the other party has changed his position relying upon the representation thereby made.” (emphasis is ours) As already noticed hereinabove, none of the ingredients of estoppel can be culled out from the facts and circumstances of the present case. In view of above, we hereby set aside the determination by the Co-operative Tribunal, as also the High Court, in having relied on the principle of estoppel, and thereby, excluding the pleas/defences raised by Pratima Chowdhury to support her claim.

28. The admitted factual position in the present controversy, in our considered view, is absolutely clear and unambiguous. Had the different adjudicating authorities taken into consideration the undisputed factual position, there ought not to have been much difficulty in resolving the difficulty. We shall highlight a few relevant admitted facts which crossed our mind while hearing the matter and whilst recording the order:-

(i) The reason for transferring flat no. 5D indicated in the letters dated 11.11.1992 and 13.11.1992 was on account of the close relationship between Pratima Chowdhury and Kalpana Mukherjee, which

was expressed by observing “...my nominee Kalpana, a close relative of mine...”. As a matter of fact, there was no close relationship between Pratima Chowdhury and Kalpana Mukherjee. Pratima Chowdhury, is indicated to have been living in Bombay and never visiting Calcutta. Kalpana Mukherjee is a resident of Calcutta, who was in employment at Calcutta, and had started to reside with her son Partha Mukherjee, after he moved to Calcutta alongwith his wife Sova Mukherjee. There was no direct relationship between Pratima Chowdhury and Kalpana Mukherjee. Pratima Chowdhury’s niece Sova Mukhrjee was married to Partha Mukherjee, son of Kalpana Mukherjee. The only relationship that can be assumed, is of aunty and niece, between Pratima Chodhury and Sova Mukherjee. If on account of love and affection, for her niece, Pratima Chowdhury desired to transfer flat no. 5D which she had purchased for a consideration of Rs.4 lakhs, she would have done so by transferring it to the name of her niece Sova Mukherjee. Affinity to Sova Mukherjee, and the love, affection and welfare of Sova Mukherjee, would not extend to a gesture of the nature under reference, i.e., by way of transfer of immovable property, of substantial value, without consideration, to the mother in law of Sova Mukherjee. Therefore, factually the expression of close relationship between Pratima Chwodhury and Kalpana Mukherjee depicted in letters dated 11.11.1992 and 13.11.1992 are on the face of it, false and incorrect. It is, therefore, improper for the adjudicating authorities to have accepted the factum of close relationship of the parties, in so far as, the transfer of flat no. 5D, is concerned.

(ii) There is hardly any justification for having accepted another important factual position depicted in the letters dated 11.11.1992 and 13.11.1992. In this behalf, our reference is to the fact that flat no. 5D was sought to be transferred by Pratima Chowdhury to Kalpana Mukherjee, without consideration. First and foremost, the aforesaid factual position is not acceptable on account of the statement of Kalpana Mukherjee herself. In the written reply filed before the Arbitrator, Kalpana Mukherjee took the express stance, that Pratima Chwodhury had transferred flat no. 5D to her name, by accepting a consideration of Rs.4,29,000/-. She further asserted, that the aforesaid consideration had passed from Kalpana Mukherjee to Pratima Chowdhury through Partha Mukherjee. According to Kalpana Mukherjee, Partha Mukherjee transferred shares in his name valued at Rs.4,29,000/-, to the name of Pratima Chowdhury. Per se therefore, even Kalpana Mukherjee denied the factual position indicated in the above letters, whereby flat no. 5D was transferred from the name of Pratima Chowdhury, to that of Kalpana Mukherjee.

(iii) The letters dated 11.11.1992 and 13.11.1992 expressly recorded, that the factual position narrated in the above letters was on account of “compliance with the rules regulating such transfer, and also, for avoiding future complications”. In view of the factual position noticed in the foregoing paragraphs, it is apparent, that false facts were being recorded for compliance with the rules and regulations, as also, for avoiding future complications. One would have appreciated the recording of consideration in lieu of the transfer of property from the name of Pratima Chowdhury to that of Kalpana Mukherjee, to avoid future complications, rather than withholding the same. It is clearly not understandable, what kind of complications were being avoided. Expressing the above factual position in the letters under reference, makes the whole transaction suspicious, mistrustful and possibly fraudulent too. In the absence of any relationship, the party benefiting from the letters dated 11.11.1992 and 13.11.1992, would have successfully avoided all complications merely by incorporating consideration, which was to pass from Kalpana Mukherjee to the transferee Pratima

Chowdhury. If consideration was to pass, and had actually passed, it is difficult to understand why the parties would say, that the transaction did not involve passing of consideration. It is therefore clear, that all the ingredients of letter dated 11.11.1992 and 13.11.1992 are shrouded in suspicious circumstances. One is prompted to record herein, that it was not legitimately open to the parties to record in the letters under reference, that flat no. 5D was being gifted by Pratima Chowdhury to Kalpana Mukherjee, on account of lack of proximity between the parties. The transfer of the said property by one to the other, by way of gift, would obviously have been subject to judicial interference, as the same would at least prima facie, give the impression of dubiety. It was therefore, that Kalpana Mukherjee hastened to adopt a different factual position in her written reply before the Arbitrator.

(iv) It is relevant to mention, that in the written statement filed by Kalpana Mukherjee (before the Arbitrator) the stand adopted by her was, that a consideration of Rs.4,29,000/- had passed from her to Pratima Chowdhury, by way of transfer of shares (standing in the name of her son, Partha Mukherjee) to the name of Pratima Chowdhury. In this behalf it would be relevant to notice, that the documents of transfer executed between Pratima Chowdhury and Kalpana Mukherjee were dated 11.11.1992 and 13.11.1992. Based thereon, the Board of Directors of the Society, in its meeting held on 14.2.1993, resolved to accept the resignation of Pratima Chowdhury. It was further resolved, to accept the membership of Kalpana Mukherjee in her place. On the date of execution of the documents under reference, as also on the date of passing of the resolution by the Board of Directors of the Society, Partha Mukherjee did not have any shares in his name. The shares which Partha Mukherjee acquired, and which Kalpana Mukherjee claims to have been transferred in lieu of consideration (to the name of Pratima Chowdhury), were shown to have been acquired on or after 8.9.1993. The dates of acquisition of the said shares, as were recorded in the order passed by the Arbitrator, which position has not been disputed before us, are as follows:-

“COMPANY’S NAME NO. OF SHARES ACQUIRED Tata Chemicals Ltd. 50 nos.
8.9.93 Tata Chemicals Ltd. 450 nos. 27.10.93 Siemens 50 nos. 2.8.93 Indian
Aluminium 500 nos. 4.3.94 I.T.C. Hotels 100 nos. acquired with Mr.

H.P. Roy
4.4.94”

It is therefore apparent, that Partha Mukherjee did not even have the shares referred to by the transferee Kalpana Mukherjee, in his name, when the transfer documents were executed on 11.11.1992 and 13.11.1992, or even on 14.2.1993 when the Board of Directors of the Society, passed the transfer resolution. The above shares are shown to have been transferred to the name of Pratima Chowdhury on 16.12.1994. Well before 16.12.1994, even according to the stance adopted by Kalpana Mukherjee, Pratima Chowdhury had executed all the transfer documents. It is therefore difficult to accept, that the parties had agreed to pass on consideration by transfer of shares, which were not even owned by Kalpana Mukherjee (through Partha Mukherjee) on the date of transfer of flat no. 5D from Pratima Chowdhury to Kalpana Mukherjee. In

sum and substance therefore, on undisputed facts, the stance adopted by Kalpana Mukherjee in the written statement filed by her before the Arbitrator, is shown to be false. This aspect of the matter would bring out a legitimate query, namely, why should Kalpana Mukherjee have adopted a false stance, contrary to the expressed position in the letters dated 11.11.1992 and 13.11.1992. This further exposes, the suspicious nature of the transfer transaction.

(v) On the subject of transfer of shares from the name of Partha Mukherjee to the name of Pratima Chowdhury, which, according to Kalpana Mukherjee constituted passing of consideration to Pratima Chowdhury (in lieu of the transfer of flat no. 5D). Pratima Chowdhury had adopted the stance, that the transfer of the above shares was on account of return of loans extended by Pratima Chowdhury to Partha Mukherjee. Insofar as the instant aspect of the matter is concerned Pratima Chowdhury had asserted, that after the transfer of Partha Mukherjee from Calcutta to Bombay in the year 1993, he gave up his employment with Colgate Palmolive (India) Limited, and started a business of aluminium products with one R.K. Sen, at Bombay. To help Partha Mukherjee with his above business venture, Pratima Chowdhury had (on the asking of Partha Mukherjee) paid a sum of Rs. 2 lakhs by way of cheque, to Bharat Aluminium Company Limited, for supply of raw materials to Partha Mukherjee's business venture. It was also pointed out, that Partha Mukherjee had also taken a loan for a sum of Rs. 1,50,000/- for the same purpose from Bani Roy (sister of Pratima Chowdhury). It was also asserted, that Sova Mukherjee had similarly extended loans, by making payments through cheque to Partha Mukherjee. The Arbitrator had accepted the above assertion of Pratima Chowdhury. For the above determination, the Arbitrator had placed reliance, on documentary and oral evidence, produced by Pratima Chowdhury. The instant factual aspect of the matter was totally overlooked by the Co-operative Tribunal, as well as, by the High Court. Keeping in view the factual position depicting in paragraph (iv) above, we have no doubt in our mind, that there was substance in the determination of the Arbitrator, specially on account of the fact that transfer of shares from the name of Partha Mukherjee to the name of Pratima Chowdhury came to be effected, well after the transfer of flat no. 5D to the name of Kalpana Mukherjee. For the above reason as well, the findings of fact recorded by the Co-operative Tribunal as well as by the High Court, are bound to be considered as having been recorded without taking into consideration all the material and relevant facts.

(vi) The fact that Pratima Chowdhury had addressed a letter to the Secretary of the Society, dated 28.2.1995, for withdrawal of her earlier letter dated 11.11.1992, is not in dispute. It is also not a matter of dispute, that at the time when Pratima Chowdhury addressed the above letter, neither the transfer of membership, nor the transfer of the flat, had assumed finality. The transfer of membership, as also the transfer of the flat, would assume finality only upon the approval of the same by the Deputy Registrar, Co-operative Societies. The factual position emerging from the record of the case reveals, that the Society sought the approval of the Deputy Registrar, Co-operative Societies for the transfer of membership, as also, flat no. 5D to the name of Kalpana Mukherjee on 13.3.1995. Undoubtedly, Pratima Chowdhury had sought revocation, before the transfers under reference had assumed finality. It is in the above background, that one needs to evaluate the reply of the Society dated 10.4.1995. Through the letter dated 10.4.1995, Pratima Chowdhury was informed, that the Society had no authority to look into the matter, after the resolution of the Board of

Directors dated 2.4.1995. We find the above explanation, untenable. It was imperative for the Society to have examined the withdrawal letter dated 28.2.1995, the matter certainly had not been concluded. Well after the withdrawal letter, the Society by its notice dated 16.4.1995 had intimated its members, about the resolution dated 2.4.1995. The matter was, therefore, pending authoritative conclusion. Thus viewed, it was not justified for the Society to deny consideration of the withdrawal letter dated 28.2.1995. Acceptance or rejection on merits is another matter, but non-consideration is not understandable. The instant non-consideration clearly invalidates the resolution passed by the Society.

(vii) On 22.3.1995, Pratima Chowdhury addressed a letter to the Deputy Registrar, Co-operative Societies, imploring him to take appropriate action, by considering the withdrawal letter dated 28.2.1995. We are surprised, that the Deputy Registrar, Co-operative Societies adopted the same stance, as was adopted by the Society. When the letter dated 22.3.1995 was addressed to the Deputy Registrar, Co-operative Societies, it had not yet granted approval to the recommendations made by the Society. The receipt of the letter dated 28.2.1995, by the Society (as also the receipt of the letter dated 22.3.1995, by the Deputy Registrar, Co-operative Societies) is not in dispute. It is imperative for us therefore to conclude, that the decision taken by the Deputy Registrar, Co-operative Societies was, without reference to the withdrawal letter dated 28.2.1995 (which was enclosed with the letter dated 22.3.1995 addressed to the Deputy Registrar, Co-operative Societies). The determination by the Deputy Registrar, Cooperative Societies, cannot therefore be treated as a valid and legitimate consideration. Acceptance or rejection on merits is another matter, but non-consideration is just not understandable. The instant non-consideration clearly invalidates the approval granted by the Deputy Registrar, Co-operative Societies.

(viii) The veracity of the execution of the documents dated 11.11.1992 and 13.11.1992 by Pratima Chowdhury, was also examined by the Arbitrator. In the above examination, the Arbitrator arrived at the conclusion, that Pratima Chowdhury was in Bombay and not in Calcutta when the above documents were executed. The above finding was recorded on the basis of three witnesses produced on behalf of the complainant (before the Arbitrator). While rejecting the conclusion drawn by the Arbitrator, the Co-operative Tribunal overlooked the statements of the witnesses produced by Pratima Chowdhury, merely because the notary was an Advocate. The Co-operative Tribunal reasoned, that the statement of S.N. Chatterjee, an Advocate, had to be given more weightage, than the witnesses produced by Pratima Chowdhury. The above determination at the hands of the Co-operative Tribunal, besides being perverse, is also totally unacceptable in law. In the facts and circumstances of the present case, the statement of the notary should have been rejected and discarded, simply because the notary in his deposition had acknowledged, that he did not issue any notarial certificate in terms of Section 8 of the Notary Act. In the absence of issuance of any such certificate, notarization of the document dated 13.11.1992 was clearly subject to suspicion. The conclusion drawn by the Co-operative Tribunal as also the High Court, to the effect that the document dated 13.11.1992 was executed at Calcutta, is therefore, based on no evidence whatsoever. The fact that the document dated 13.11.1992 had not been executed in Calcutta, was also sought to be substantiated by showing, that the registration number of the Society was not depicted in the said letter, even though the said letter was shown to have been executed at the residence of the Secretary of the Society. It was reasoned, that the Secretary of the Society would have supplied the aforesaid

number, if the above document had been executed at his residence. Having rejected the credibility of the statement of S.N. Chatterjee (the notary), and having not accepted the fact that the above document was executed at the residence of Anil Kumar Sil, the Secretary of the Society, we find no reason for not accepting the statements of the three witnesses produced by Pratima Chowdhury, to show that she (Pratima Chowdhury) was at Bombay on 11.11.1992, as well as, on 13.11.1992. Herein again, the Cooperative Tribunal and the High Court, erred on the face of the record, by not taking into consideration material facts, available on the file of the case.

(ix) In the background of the factual position emerging from the deliberations recorded hereinabove, it is also necessary to notice, that the Arbitrator had placed heavy reliance on the fact, that Kalpana Mukherjee had deposited rent on 21.10.1993 (payable to Pratima Chowdhury), into the account of Pratima Chowdhury, by herself, filling up the bank deposit voucher. Accordingly, the Arbitrator inferred, that the property in question, even to the knowledge of Kalpana Mukherjee, had not actually been transferred to her name by Pratima Chowdhury (at least upto 21.10.1993). That was the reason, why Kalpana Mukherjee had continued to deposit rent for flat no. 5D, into the account of Pratima Chowdhury upto 21.10.1993. Coupled with the aforesaid factual aspect, the Arbitrator placed great reliance on the letter dated 28.10.1993 addressed by Partha Mukherjee to Colgate Palmolive (India) Limited, wherein, he described Pratima Chowdhury as the “landlady”. Undoubtedly, if the documents relied upon by Kalpana Mukherjee were genuine, Partha Mukherjee would not have acknowledged the ownership of Pratima Chowdhury over flat no. 5D (on 28.10.1993). These aspects of the matter were totally overlooked by the Co-operative Tribunal, as well as, by the High Court. These were vital facts, and needed to be examined, if the order passed by the Arbitrator was to be interfered with. In the absence of such consideration, the findings of fact recorded by the Co-operative Tribunal and by the High Court, are bound to be considered as perverse. Since the factual position attributed to the actions of 21.10.1993 and 28.10.1993, which emanated and emerged from Kalpana Mukherjee and Partha Mukherjee respectively, we are of the view that entire sequence of transfer, is rendered doubtful and suspicious.

(x) The determination of the Arbitrator, on the subject of the transfer of the covered garage, to the name of Kalpana Mukherjee was also overlooked by the Co-operative Tribunal, as well as, by the High Court. From the facts already narrated above, it is clear that Pratima Chowdhury, had one covered garage space also. Whilst reference was made about the details of the flat sought to be transferred, in the transfer documents, no reference was made to the covered garage space. Based on the letter dated 11.11.1992, and the document dated 13.11.1992, flat no. 5D was transferred to the name of Kalpana Mukherjee. The instant transfer however did not include the covered garage space. Thereafter, based on an agreement executed between Kalpana Mukherjee (on the one hand), and the Society (on the other), the said covered garage space was transferred to the name of Kalpana Mukherjee, on 25.4.1995. The said transfer was not at the behest of, or with the concurrence of Pratima Chowdhury. Therefore, according to the view expressed by the Arbitrator, the covered garage space, must be deemed to have never been transferred to Kalpana Mukherjee by its erstwhile owner. The Arbitrator also expressed the view, that the agreement dated 25.4.1995 could not have been executed without the participation of Pratima Chowdhury. The above factual position has not been disputed at the hands of Kalpana Mukherjee, before this Court. The above reasoning, in our considered view, was fully justified. The instant aspect of the matter was also totally overlooked by

the Co-operative Tribunal, as well as, by the High Court. For the above reason also, the findings of the fact, recorded by the Co-operative Tribunal and by the High Court, are bound to be treated as perverse.

29. For all the reasons recorded by us in foregoing sub-paragraphs, we are of the view that the Co-operative Tribunal as well as the High Court, seriously erred in recording their conclusions. We are satisfied in further recording, that the Arbitrator was wholly justified in allowing the Dispute Case filed by Pratima Chowdhury, by correctly appreciating the factual and legal position.

30. The Co-operative Tribunal as well as the High Court, had invoked the principle of justice and equity, and the doctrine of fairness, while recording their eventual findings in favour of Kalpana Mukherjee. It is, therefore, necessary for us, to delve upon the above aspect of the matter. Before we venture to examine the instant controversy in the above perspective, it is necessary to record a few facts. It is not a matter of dispute, that for a long time Pratima Chowdhury had been residing at Bombay. She was residing at Bombay in the house of H.P. Roy and Bani Roy. Bani Roy, as stated above, is the sister of Pratima Chowdhury. H.P. Roy is a wealthy person. Partha Mukherjee son of Kalpana Mukherjee, is an engineering graduate from IIT, Kharagpur. He also possesses the qualification of MBA, which he acquired from Ahmedabad. Originally Partha Mukherjee was employed as Sales Manager/Regional Manager with Colgate Palmolive (India) Limited, at Bombay. Partha Mukherjee married Sova Mukherjee (the daughter of H.P. Roy), whilst he was posted at Bombay in 1987. Soon after his marriage, Partha Mukherjee and Sova Mukherjee also started to live in the house of H.P. Roy (father-in-law of Partha Mukherjee). The evidence available on the record of the case reveals, that Pratima Chowdhury treated Sova Mukherjee as her daughter, and Partha Mukherjee as her son. In 1992, Partha Mukherjee was transferred from Bombay to Calcutta. Immediately on his transfer, Pratima Chowdhury accommodated him in flat no. 5D. Subsequently, Colgate Palmolive (India) Limited entered into a lease and licence agreement, in respect of flat no. 5D with Pratima Chowdhury, so as to provide residential accommodation to Partha Mukherjee (as per the terms and conditions of his employment). Obviously, Partha Mukherjee was instrumental in the execution of the above lease and licence agreement. In order to deposit monthly rent payable to Pratima Chowdhury (by Colgate Palmolive (India) Limited), Partha Mukherjee opened a bank account in the name of Pratima Chowdhury, jointly with himself. He exclusively operated the above account, for deposits as well as for withdrawals. Not only that, the findings recorded by the Arbitrator indicate that the letter dated 11.11.1992 written by Pratima Chowdhury was drafted by Partha Mukherjee. The aforesaid conclusion was drawn from the fact that the manuscript of the original was in the handwriting of Partha Mukherjee. All the above facts demonstrate, a relationship of absolute trust and faith between Pratima Chowdhury and Partha Mukherjee. The aforesaid relationship emerged, not only on account of the fact that Partha Mukherjee was married to Sova Mukherjee (the niece of Pratima Chowdhury), but also on account of the fact, that Partha Mukherjee and his wife Sova Mukherjee soon after their marriage lived in the house of H.P. Roy (husband of the sister of Pratima Chowdhury). They resided together with Pratima Chowdhury till 1992, i.e., for a period of more than a decade, before Partha Mukherjee was transferred to Calcutta. In our considered view the relationship between Partha Mukherjee and Pratima Chowdhury would constitute a fiduciary relationship. Even though all the above aspects of the relationship between the parties were taken into consideration, none of the adjudicating authorities dealt with the

controversy, by taking into account the fiduciary relationship between the parties. When parties are in fiduciary relationship, the manner of examining the validity of a transaction, specifically when there is no reciprocal consideration, has to be based on parameters which are different from the ones applicable to an ordinary case. Reference in this behalf, may be made to the decision rendered by this Court in Subhas Chandra Das Mushib vs. Ganga Prosad Das Mushib, AIR 1967 SC 878, wherein this Court examined the twin concepts of “fiduciary relationship” and “undue influence” and observed as under:

“We may now proceed to consider what are the essential ingredients of undue influence and how a plaintiff who seeks relief on this ground should proceed to prove his case and when the defendant is called upon to show that the contract or gift was not induced by undue influence. The instant case is one of gift but it is well settled that the law as to undue influence is the same in the case of a gift inter-vivos as in the case of a contract.

Under s. 16 (1) of the Indian Contract Act a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This shows that the court trying a case of undue influence must consider two things to start with, namely, (1) are the relations between the donor and the donee such that the donee is in a position to dominate the will of the donor and (2) has the donee used that position to obtain an unfair advantage over the donor’?

Sub-section (2) of the section is illustrative as to when a person is to be considered to be in a position to dominate the will of another. These are inter alia (a) where the donee holds a real or apparent authority over the donor or where he stands in a fiduciary relation to the donor or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Sub-section (3) of the section throws the burden of proving that a contract was not induced by undue influence on the person benefiting by it when two factors are found against him, namely that he is in a position to dominate the will of another and the transaction appears on the face of it or on the evidence adduced to be unconscionable.

The three stages for consideration of a case of undue influence were expounded in the case of Ragunath Prasad v. Sarju Prasad and others (AIR 1924 PC 60) in the following words :- "In the first place the relations between the parties to each other must be such that one is in a position to dominate the will of the other. Once that position is substantiated the second stage has been reached-namely, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that the contract was not

induced by undue influence is to lie upon the person who was in a position to dominate the will of the other.” (emphasis is ours) The subject of fiduciary relationship was also examined by this Court in, Krishna Mohan Kul alias Nani Charan Kul vs. Pratima Maity, (2004) 89 SCC 468, wherein it was held as under:

“.....When fraud, mis-representation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position and he has to prove that there was fair play in the transaction and that the apparent is the real, in other words that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with jealousy all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation the law presumes everything against the transaction and the onus is cast against the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position. This principle has been engrained in Section 111 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The rule here laid down is in accordance with a principle long acknowledged and administered in Courts of Equity in England and America. This principle is that he who bargains in a matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The transaction is not necessarily void ipso facto, nor is it necessary for those who impeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other. Agents, trustees, executors, administrators, auctioneers, and others have been held to fall within the rule. The Section requires that the party on whom the burden of proof is laid should have been in a position of active confidence where fraud is alleged, the rule has been clearly established in England that in the case of a stranger equity will not set aside a voluntary deed or donation, however, improvident it may be, if it be free from the imputation of fraud, surprise, undue influence and spontaneously executed or made by the donor with his eyes open. Where an active confidential, or fiduciary relation exists between the parties, there the burden of proof is on the donee or those claiming through him. It has further been laid down that where a person gains a great advantage over another by a voluntary instrument, the burden of proof is thrown upon the person receiving the benefit and he is under the necessity of showing that the transaction is fair and honest.

13. In judging of the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donor/beneficiary under a document to prove due execution of the document in accordance with law, even de hors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before Court.

14. It is now well established that a Court of Equity, when a person obtains any benefit from another imposes upon the grantee the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it. The proposition is very clearly stated in Ashburner's Principles of Equity, 2nd Ed., p.229, thus:

"When the relation between the donor and donee at or shortly before the execution of the gift has been such as to raise a presumption that the donee had influence over the donor, the court sets aside the gift unless the donee can prove that the gift was the result of a free exercise of the donor's will." (emphasis is ours) The above conclusions recorded by this Court, came to be reiterated recently in Anil Rishi Vs. Gurbaksh Singh, (2006) 5 SCC 558.

31. While deciding the proposition in hand, we must keep in mind the law declared by this Court on the subject of fiduciary relationship. We will also proceed by keeping in mind, what we have already concluded in the preceding paragraph, i.e., that relationship between Partha Mukherjee and Pratima Chowdhury was a relationship of faith, trust and confidence.

Partha Mukherjee was in a domineering position. He was married to Sova Mukherjee. Sova Mukherjee is the daughter of H.P. Roy. Pratima Chowdhury has lived for a very long time in the house of H.P. Roy. During that period (after his marriage) Partha Mukherjee also shared the residential accommodation in the same house with Pratima Chowdhury, for over a decade. In Indian society the relationship between Partha Mukherjee and Pratima Chowdhury, is a very delicate and sensitive one. It is therefore, that Pratima Chowdhury extended all help and support to him, at all times. She gave him her flat when he was transferred to Calcutta. She also extended loans to him, when he wanted to set up an independent business at Bombay. These are illustrative instances of his authority, command and influence. Instances of his enjoying the trust and confidence of Pratima Chowdhury include, amongst others, the joint account of Pratima Chowdhury with Partha Mukherjee, which the latter operated exclusively, and the drafting of the letters on behalf of Pratima Chowdhury. In such fact situation, we are of the view, that the onus of substantiating the validity and genuineness of the transfer of flat no. 5D, by Pratima Chowdhury, through the letter dated 11.11.1992 and the document dated 13.11.1992, rested squarely on the shoulders of Kalpana Mukherjee. Because it was only the relationship between Partha Mukherjee and Pratima

Chowdhury, which came to be extended to Kalpana Mukherjee. The document dated 13.11.1992 clearly expressed, that the above transfer was without consideration. Kalpana Mukherjee in her written reply before the Arbitrator asserted, that the above transfer was on a consideration of Rs.4,29,000/-. The Arbitrator in his order dated 5.2.1999 concluded, that Kalpana Mukherjee could not establish the passing of the above consideration to Pratima Chowdhury. The Cooperative Tribunal, as well as, the High Court, despite the factual assertion of Kalpana Mukherjee were of the view, that passing of consideration was not essential in determination of the genuineness of the transaction. We are of the view, that the Cooperative Tribunal, as well as, the High Court seriously erred in their approach, to the determination of the controversy. Even though the onus of proof rested on Kalpana Mukherjee, the matter was examined by requiring Pratima Chowdhury to establish all the alleged facts. We are of the view, that Kalpana Mukherjee miserably failed to discharge the burden of proof, which essentially rested on her. Pratima Chowdhury led evidence to show, that she was at Bombay on 11.11.1992 and 13.11.1992. In view of the above, the letter dated 11.11.1992 and the document dated 13.11.1992, shown to have been executed at Calcutta could not be readily accepted as genuine, for the said documents fell in the zone of suspicion, more so, because the manuscript of the letter dated 11.11.1992 was in the hand-writing of Partha Mukherjee. Leading to the inference, that Partha Mukherjee was the author of the above letter. It is therefore not incorrect to infer, that there seems to be a ring of truth, in the assertion made by Pratima Chowdhury, that Partha Mukherjee had obtained her signatures for executing the letter and document referred to above. We find no justification whatsoever for Pratima Chowdhury, to have transferred flat no. 5D to Kalpana Mukherjee, free of cost, even though she had purchased the same for a consideration of Rs. 4 lakhs in the year 1987. Specially so, when she had no direct intimate relationship with Kalpana Mukherjee. By the time the flat was transferred, more than a decade had passed by, during which period, the price of above flat, must have escalated manifold. Numerous other factual aspects have been examined by us above, which also clearly negate the assertions made by Kalpana Mukherjee. The same need not be repeated here, for reasons of brevity. Keeping in mind the above noted aspects, we are of the considered view, that invocation of the principle of justice and equity, and the doctrine of fairness, would in fact result in returning a finding in favour of Pratima Chowdhury, and not Kalpana Mukherjee.

32. For the reasons recorded hereinabove, the instant appeal is allowed, the order dated 16.5.2002 passed by the Co-operative Tribunal, and the order dated 14.2.2006 passed by the High Court, are hereby set aside. The determination rendered by the Arbitrator in his award dated 5.2.1999, is hereby affirmed. Kalpana Mukherjee is directed to handover the possession of flat no. 5D to Pratima Chowdhury, within one month from today. The Society is also directed to retransfer the shares of the Society earlier held by Pratima Chowdhury, and the ownership rights of flat no. 5D to the name of Pratima Chowdhury, without any delay.

.....CJI.

(P. Sathasivam)J.

(Jagdish Singh Khehar) New Delhi;

February 10, 2014.
