

# Satynarayan Nandkishor Pande vs Mr. Vinay Jagdishchandra Pande And Ors on 22 December, 2018

Equivalent citations: AIRONLINE 2019 BOM 8

Author: S.J.Kathawalla

Bench: S.J. Kathawalla

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CA No. 482 of 2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL APPLICATION NO. 482 OF 2018  
IN  
WRIT PETITION NO. 721 OF 2016

Satyanarayan Nandkishore Pande )  
Age : 72 years, An adult Indian Inhabitant, )  
Occupation : Retired, R/o. 49/2, Laxmi Niwas )  
J.B. Nagar, Andheri (East), Mumbai - 400 059 )... Applicant/Org.Res.No

Versus

1. Vinay Jagdishchandra Pande, )  
Age : 45 years, Occupation : Business, )  
R/o. 2532/Fair Banks Place, )  
Chantilly VA 20152, U.S.A. )

2. Mrs.Kusumlata Jagdishchandra Pande )  
Age : 74 years, Occupation : Housewife )  
R/o. C/o. Mr.Laxmidutt Sharma, 17-A-1, )  
Pollo Ground, Behind Field Club, Udaypur )  
Rajasthan, Indian - 313001 )

3. Mrs.Vandana Shyam Shringi, )  
Age : 52 years, Occupation : Service )  
R/o.Research Engineering Masdar, Institute of Science) and Technology, Masdar City, Abu Dhabi, UAE )... Respondents

Mr. Nilesh Ojha, instructed by Ms.Reena Rana, Mr.Vijay Kurle, Mr.Aameer Kale, Ms.Madhuri Gamre, Ms.Shweta Doshi, Ms.Tanvi Kambl and Ms.Arpana Bhosale for the Applicant.

CORAM : S.J. KATHAWALLA, J.  
JUDGMENT RESERVED ON : 23 RD JULY, 2018  
JUDGMENT PRONOUNCED ON :22ND DECEMBER, 2018

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CA No. 482 of 2018

JUDGMENT :

1. The above Civil Application is filed under Section 340 read with Section 195 of the Code of Criminal Procedure by Shri Satyanarayan N. Pande, Applicant abovenamed (Respondent No. 1 in Civil Writ Petition No. 721 of 2016), against Mr. Vinay Jagdishchandra Pandey, Mrs. Kusumlata Jagdishchandra Pande and Mrs. Vandana Shyam Shringi, Respondent Nos. 1, 2 and 3 abovenamed (Petitioners in Civil Writ Petition No. 721 of 2016).

2. The above Civil Application along with Civil Application Nos. 497 of 2018 in Writ Petition No. 4009 of 2017, 495 of 2018 in Writ Petition No. 3503 of 2016 and 944 of 2018 in Writ Petition No. 1455 of 2016 is placed for hearing. The facts in all the Civil Applications overlap to a large extent. Advocate Mr. Nilesh Ojha made his detailed submissions in the above Civil Application and submitted that the other three Civil Applications are similar. However, I am of the view that separate judgments are required to be written/passed in the above Civil Applications, and accordingly I have done so. The Civil Applications were reserved for orders on 23<sup>rd</sup> July, 2018. However, before dictation of the judgments, Mr. Nilesh Ojha mentioned Notice of Motion No. 1433 of 2018 in Suit No. 929 of 2013 seeking reliefs under Section 340 of the Cr. P.C., along with other matter. Though the said Notice of Motion was not related to the above Application and the other three connected Applications, the issue, as to whether the Court can hear the other side/Accused in the matter, was common. In the said Notice of Motion, Mr. Madon, Learned Senior Advocate along with Mr. Sharan Jagtiani and Mr. Aditya Shiralkar, instructed by M/s. Shiralkar and Company pointed out several grounds in support of their case that they ought to be heard in the matter. Mr. Ojha opposed the same and submitted that the said issue be decided as a preliminary issue. After hearing the Advocates at length on several adjourned dates, the decision on the preliminary issue was reserved for orders. The Advocates had agreed to file their written submissions. Thereafter, by a notice dated 14<sup>th</sup> September, 2018, the assignment pertaining to the said matter was changed with effect from 17<sup>th</sup> September, 2018. However, on 18<sup>th</sup> September, 2018, Mr. Madon informed the Court that his written submissions are ready and Mr. Aameer Kale instructed by Mr. Nilesh Ojha sought time to file the written submissions. However, on 25<sup>th</sup> September, 2018 Advocate Mr. Ojha submitted that since the assignments have changed, and written submissions are yet to be filed, this Court should refer the said Notice of Motion No. 1433 of 2018 in Suit No. 929 of 2013 to the Regular Court. In view thereof, by Order dated 25<sup>th</sup> September, 2018 the said matters were referred to the regular Court and it is only thereafter that the above Civil Applications were taken up for passing of Orders. On 17<sup>th</sup> December, 2018, Advocate for the Applicant mentioned the matter and requested the Court to pronounce the orders in the above Civil Applications. The Court informed the Advocate that in the above circumstances passing of orders has taken time. The Court however assured the Advocate for the Applicant that the order in the above Civil Application along with three Applications will be pronounced shortly. On 19<sup>th</sup> December, 2018, Mr. Ojha filed a precipe and mentioned the matter before the Court, and inter alia informed the Court that he is relying on two

more judgments i.e. judgment of the Hon'ble Supreme Court in the case of Sandeep Kumar Bafna vs. State of Maharashtra and another 1 and the decision of a Learned Single Judge of this Court in the case of Madangopal Banarasilal Jalan and others vs. Partha s/o Sarathy Sarkar<sup>2</sup>. Mr. Ojha tendered copies of both the judgments and requested the Court to pronounce the judgment at the earliest. With this prelude I now proceed with the judgment hereunder:

3. Jagdishchandra Pande, who passed away on 2nd October, 2013, was the elder brother of the Applicant. Respondent No. 2 is the widow of the deceased Jagdishchandra Pande and Respondent Nos. 1 and 3 are the son and daughter of the deceased Jagdishchandra Pande.

4. The subject property is plot No. 49, Laxmi Niwas, J.B. Nagar, Andheri (East), Mumbai-400 093 ("the said Property"). The Society of the plot owners is known as, Shree Rajasthan Co-operative Housing Society Ltd.

5. Nandkishore Ghasiram Pande was, amongst others, the father of the Applicant

- Satyanarayan Pande and his brother Jagdishchandra Pande. The Applicant filed a complaint with the Police, inter alia, alleging that his brother Jagdishchandra Pande and one Gulabchand Sarda (who have passed away on 2nd October, 2013 and 17th December, 2012, respectively) had forged the death certificate of the Applicant's 1 (2014) 16 SCC 623 2 2018 SCC Online Bom 3525 father and with the help of false and fabricated documents and in connivance with the office-bearers of Shree Rajasthan Co-operative Housing Society Limited, had managed to get the said Property transferred in their names. An FIR being C.R. No. 226 of 2009 was registered at the instance of the Applicant against Accused No.1 -

Jagdishchandra Pande (whose legal heirs are Respondent Nos. 1 to 3 herein) and 18 others for offences punishable under Sections 420, 465, 467, 468, 471 of the Indian Penal Code ('IPC') read with Sections 34 and 120 (B) of the IPC, which was subsequently transferred to the Economic Offences Wing (EOW) Unit II, Mumbai, vide C.R. No. 41 of 2009. All the 19 accused in the FIR later approached the Sessions Court at Mumbai seeking anticipatory bail which was granted to 16 accused persons, but was rejected in the case of Jagdishchandra Pande, Gulabchandra Sarda and Vijaykumar Sarda (Accused Nos. 1, 2 and 3 respectively). Accused No.1 - Jagdishchandra Pande was arrested some time in 2009 by the EOW and he was in custody for more than 21 days before he was granted bail.

6. The remaining 16 persons had filed Criminal Writ Petition No. 522 of 2010 before this Court and by an Order dated 13th July, 2010, the investigation against them was stayed. It was clarified by the said Order that the same would not prevent any of the parties from approaching the Co-operative Court or the Civil Court for appropriate remedy.

7. In the year 2012, the EOW investigated the allegations against Accused Nos. 1 to 3 (Jagdishchandra Pande, Gulabchand Sarda and Vijaykumar Sarda) and filed charge sheet against

Accused Nos. 1 to 3. Since Accused Nos. 1 and 2 passed away during the trial, the trial Court framed charges only against Accused No.3.

8. In the year 2009, the Applicant had filed an Application being Application No. 1 of 2009, under Section 25A of the Maharashtra Co-operative Societies Act, 1960 ("the Act") before the Learned Deputy Registrar, Co-operative Societies, K/East Ward, Mumbai, against Shree Rajasthan Co-operative Housing Society Limited, Jagdishchandra Pande and Gulabchand Sarda with a prayer that the names of Jagdishchandra Pande and Gulabchand Sarda be removed/deleted from the record of Respondent No. 2 Society. In the said Application, the Applicant has stated that the said Property was allotted by the Society to his father -- Nandkishor Ghasiram Pande and one Bapulal Balmukund Jhavar; that the Share Certificate was issued by the Society in the name of Bapulal Nandkishor; that the plot was registered in the records of the Society also in the name of Bapulal Nandkishor since inception i.e. from 1947- 48; that the lease deed dated 14-1-1961 was signed in favour of Nandkishor Bapulal; that for all practical purposes Nandkishor Ghasiram Pande was handling the affairs of the plot and he used to sign "for Nandkishor Bapulal"; that Jagdishchandra Pande and Gulabchand Sarda fraudulently got the said plot transferred in their names; that the Society did not accede to his request to allow him to take inspection of the relevant documents which compelled him to file a complaint on 24 th October, 2008 before the Deputy Registrar, Co-operative Societies, who conducted inspection of the records of the Society and thereafter addressed a letter to the Applicant dated 1 st December, 2008, pointing out how the said Property was fraudulently transferred in the names of Jagdishchandra Pande and Gulabchand Sarda on the basis of a fabricated nomination form and a fabricated death certificate; that the Respondents had interpolated the records of the Society in a systematic manner so as to grab the property of the deceased member; that Jagdishchandra Pande made certain admissions vide his letters dated 26th December, 2008, 17th January, 2009 and 18th February, 2009 qua the fabrication in respect of the nomination form and the death certificate; that the Society was hand in glove with the Respondents and was ignoring to take any action against Jagdishchandra Pande and Gulabchand Sarda; that Jagdishchandra Pande and Gulabchand Sarda have no right to continue as members of the Society because their nomination form itself was bogus, fabricated, invalid, bad-in-law and therefore, their names ought to be removed from the records of the Society.

9. The Deputy Registrar, vide his Order dated 7th July, 2009, allowed the said Application No. 1 of 2009, wherein he has recorded the allegations and counter allegations of the parties and has concluded that under the circumstances set out in his Order, the nomination letter as well as the transfer that has taken place is not in accordance with law. He has recorded that he has the power to decide whether Jagdishchandra Pande and Gulabchand Sarda are entitled to be members of the Society in respect of the said plot and he is not deciding the issue pertaining to the title to the said plot.

10. Shree Rajasthan Co-operative Housing Society Ltd. filed Revision Application No. 278 of 2009 and Gulabchand Sarda filed Revision Application No. 293 of 2009 before the Divisional Joint Registrar, Co-operative Societies, Mumbai, impugning the Order dated 7th July, 2009, passed by the Deputy Registrar, Co-operative Societies, K/East Ward, Mumbai, under Section 25A of the Act. The said Revision Applications came to be rejected by the Divisional Joint Registrar, Co-operative

Societies, Mumbai, vide his Order dated 16 th October, 2012 and the impugned Order passed by the Deputy Registrar dated 7th July, 2009 was upheld. In the said Order, the Divisional Joint Registrar has in detail, recorded the allegations made by the parties against each other, including the allegations pertaining to the forged and fabricated nomination form, transfer of membership, etc. The Divisional Joint Registrar by his Order, inter alia made it clear that the rights of Jagdishchandra Pande (husband of Respondent No.2 herein and father of Respondent Nos. 1 and 3 herein) and Gulabchand Sarda in the said Property, if any, do not automatically come to an end in view of the said Order. Their remedy in law continues to be intact and if they proceed in accordance with law to assert their title and succeed in getting appropriate declarations, the Respondent Society, as well as the concerned parties, will have to abide by the same.

11. Vijaykumar Sarda, son of Gulabchand Sarda and his wife filed Writ Petition No. 3124 of 2013 before this Court impugning the Order passed by the Deputy Registrar, Co-operative Societies, Mumbai, dated 7th July, 2009, allowing the Application filed by the Applicant under Section 25A of the Act, as also the Order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, dated 16 th October, 2012, rejecting the application filed by the Society and Gulabchand Sarda, and upholding the Order passed by the Deputy Registrar. The Learned Single Judge of this Court by her Order dated 1 st July, 2013, was pleased to quash and set aside the impugned orders on the ground that on a plain reading of Section 25A of the Act, it is clear that the Deputy Registrar is not empowered to entertain and decide the application filed by the Applicant herein as the provisions of Section 25A of the Act are not adjudicatory in nature. The Learned Judge also observed that it is the case of the Applicant that the names of Jagdishchandra Pande and Gulabchand Sarda were entered in the membership register by playing a fraud on the Respondent Society; the Applicant could have availed the remedies open to him in law and that the Application under Section 25A of the Act was not tenable and the same could not have been entertained by the Deputy Registrar and that both the Orders suffer from jurisdictional errors.

12. The Applicant herein filed a Special Leave Petition before the Hon'ble Supreme Court of India, being Special Leave to Appeal (Civil) CC No. 22737of 2013 impugning the Order passed by this Court in Writ Petition No. 3124 of 2013, which was dismissed by the Hon'ble Supreme Court.

13. The Applicant thereafter filed Dispute No. CC/IV/2014 before the Co- operative Court No. IV, Ballard Estate, Mumbai, against the heirs of Jagdishchandra Pande i.e. the Respondents herein and Gulabchand Sarda on 25 th April, 2014, for a declaration that the act of the Society to carry out the mutation entries in the records of the Society in the name of Jagdishchandra Pande and Gulabchand Sarda be declared null and void and for a declaration that the Resolution of the Society dated 9th January, 1994 passed in the Managing Committee of the Society to carry out the transfer of the said plot in the name of Jagdishchandra Pande and Gulabchand Sarda be declared null and void. In the said dispute, the Applicant has once again set out all his submissions pertaining to the said Property and has repeated his allegations qua the false and fabricated documents, including the allegation that Jagdishchandra Pande and Gulabchand Sarda, with the active help of the Society, had fabricated the records of the Society, and on the basis of the fabricated documents such as the death certificate of Nandkishor Bapulal and the nomination form transferred the said plot in the names of Jagdishchandra Pande and Gulabchand Sarda; that this was done despite the fact that no person

existed by the name of Nandkishor Bapulal; that the application for membership dated 7th January, 1994, the share transfer form dated nil, the nomination form dated 30th June, 1973, death certificate dated 10 th May, 1990, have all been fabricated and/or are documents which are tampered with; that the name of Jagdishchandra Pande and Gulabchand Sarda were therefore added as members without following the due process of law, and their names ought to be deleted; that a Criminal FIR No. 226 of 2009 was registered against Opponent Nos. 1, 2 and 3 under Sections 415, 465, 467, 468, 471 read with Section 34 and 120 (B) of the IPC for connivance with each other and fabricating the death certificate of Nandkishor Ghasiram Pande by applying white ink on 'Ghasiram' and writing 'Bapulal' over the same, so as to pass off the death certificate of Nandkishor Ghasiram Pande as that of Nandkishor Bapulal Pande.

14. The above Dispute filed by the Applicant is pending before the Co-operative Court till date. However, in the meantime the Applicant also filed Application No. 1 of 2014 before the Deputy Registrar, Co-operative Societies, K/East Ward, Mumbai, seeking a declaration that Jagdishchandra Pande and Gulabchand Sarda have, upon their demise, ceased to be the nominee members of the Respondent Society. No right or interest therefore subsists in them with regard to Plot No. 49 and therefore the Respondent Society be directed to remove the names of Jagdishchandra Pande and Gulabchand Sarda from the Membership of the said Plot No. 49. The said Application was disposed of by the Deputy Registrar, Co-operative Societies, K/East Ward by his Order dated 21st May, 2015, directing the Society to delete the names of Late Jagdishchandra Pande and Gulabchand Sarda within a period of two weeks and to submit compliance report to his office. In his order, the Deputy Registrar has recorded the allegations made by the Applicant against Jagdishchandra Pande and Gulabchand Sarda as regards fabrication of nomination form and the death certificate of a non-existing person viz. Nandkishor Bapulal. The Deputy Registrar has also recorded that the heirs of late Jagdishchandra Pande and Gulabchand Sarda have challenged the maintainability of the said application on the ground that an identical application was made before the very same forum under Section 25A of the Act, which was set aside by this Court by an Order passed in Writ Petition No. 3124 of 2013, and that the Applicant has also filed substantive dispute in the IVth Co- operative Court, Mumbai, but the same has been rejected on the ground that the death of Jagdishchandra Pande and Gulabchand Sarda gave a fresh cause of action to the Applicant to move the said application for removal of their names; that the said Jagdishchandra Pande and Gulabchand Sarda were admitted to the membership on the basis of the nomination of the original member Nandkishor Bapulal; that whether the nomination is genuine or bogus has no relevance so far as the present application is concerned ; that the nominee members have no inheritable interest and that they have no authority to make nomination; that in view of the death of Jagdishchandra Pande and Gulabchand Sarda, they ceased to be members as per Section 25A of the Act and their names are required to be removed by the Respondent Society from the membership register. The Respondent Society was therefore directed to remove the names of the said two deceased nominee members.

15. The heirs of Gulabchand Sarda filed a Revision Application under Section 154 of the Act, being Revision Application No. 184 of 2015 impugning the Order dated 21 st May, 2015, passed by the Deputy Registrar. The Divisional Joint Registrar, Co- operative Societies, by his Order dated 5th October, 2015, has upheld the Order passed by the Deputy Registrar on the ground that since Jagdishchandra Pande and Gulabchandra Sarda have passed away, the Deputy Registrar was correct

in directing the Respondent Society to remove the names of the deceased members under the provisions of Section 25A of the Act.

16. Being aggrieved by the said Orders, the Petitioners filed Writ Petition No.721 of 2016 before this Court, seeking quashing and setting aside of the Order passed by the Deputy Registrar, Co-operative Societies dated 21st May, 2015, directing the Society to delete the names of late Jagdishchandra Pande and late Gulabchand Sarda within a period of two weeks and the Order passed in Revision Application No. 239 of 2015 dated 5th October, 2015, dismissing the Revision Application and upholding the Order passed by the Deputy Registrar dated 21st May, 2015.

17. In the Writ Petition, though the Respondents herein (Petitioners therein) have stated that they are the heirs of Jagdishchandra Pande, who was a member of Respondent No. 2 Society, being joint owner along with Gulabchand Sarda in respect of the said Property and as such a member, Late Jagdishchandra Pande held shares bearing Share Nos. 191 to 200 under Certificate No. 20 issued by the Society and that Respondent No. 1 is the younger brother of late Jagdishchandra Pande and a tenant in the Respondent No. 2 Society, the Respondents herein (Petitioners therein) have challenged only two of the aforesaid impugned orders i.e. the Order dated 21 st May, 2015 passed by the Deputy Registrar directing the names of Jagdishchandra Pande and Gulabchand Sarda to be removed from the Register, and the Order of the Divisional Joint Registrar, Co-operative Societies, Mumbai, dated 5 th October, 2015, upholding the Order passed by the Deputy Registrar, dated 21 st May, 2015, not on any other grounds but on the following questions of law:

"(a) Whether the Orders of Ld. Dy. Registrar and Ld. Divisional Joint Registrar are bad in eyes of law being null and void ?

(b) Whether the orders passed by Ld. Dy. Registrar and Ld. Divisional Joint Registrar are without jurisdiction, illegal and bad in law ?

(c) Whether the Dy. Registrar and Ld. Divisional Joint Registrar have misconstrued the powers vested in Dy. Registrar u/s. 25A Maharashtra Co-operative Societies Act ?

(d) Whether the non-joinder of necessary parties i.e. heirs of Mr. Jagdishchandra Pande resulted in miscarriage of justice ?

(e) Whether the Respondent No.1 did not had locus standi to file Application u/s.25A Maharashtra Co-operative Societies Act before Dy.

Registrar ?

(f) Whether Ld. Dy. Registrar and Ld. Divisional Joint Registrar exercised undue haste in executing their Orders ? " It will not be out of place to mention here that the Respondents herein (Petitioners in Writ Petition No. 721 of 2016) have been careful enough to annex to the Writ Petition, the entire Application No. 1 of 2009 filed by the Applicant (being Exhibit-B); copy of the common order dated 16th January 2012, passed by the Divisional Joint Registrar in Revision Application No.278 of 2009

and Revision Application No.293 of 2009 (being Exhibit-C); copy of the Order dated 1 st July, 2013 passed in Writ Petition No. 3124 of 2013 (being Exhibit-D); copy of the Order dated 14 th February, 2014, passed in Special Leave to Appeal (Civil) No. 22737 of 2013 (being Exhibit-E); copy of the Dispute filed by the Applicant before the Co-operative Court (being Exhibit-F); copy of the Application No. 1 of 2014 (being Exhibit-G); copy of the impugned Order passed by the Dy. Registrar dated 21 st May, 2015 (being Exhibit-H) and copy of the impugned Order passed by the Divisional Joint Registrar dated 5 th October, 2015 (being Exhibit-I).

18. It is only after the above Writ Petition was filed by the Respondents herein (Petitioners therein) on 18th December, 2015, that on 9th March, 2016, the EOW filed Criminal Application No. 129 of 2016 in Criminal Writ Petition No. 522 of 2010, setting out therein that in the year 2012 they had filed charge-sheet against Accused Nos. 1 to 3 and the investigation was stayed by this Court qua the other 16 accused by an Order dated 13th July, 2010 passed in Criminal Writ Petition No. 522 of 2010; that Accused Nos. 1 and 2 i.e. Jagdishchandra Pande and Gulabchand Sarda passed away on 2nd October, 2013 and 17th December, 2012 respectively, and the Trial Court has framed charges only against Respondent No.3; that to enable EOW to proceed against the other 16 accused, this Court be pleased to either vacate the stay or dispose of Criminal Writ Petition No. 522 of 2010 finally.

19. On 6th February, 2018, the Applicant, who is Respondent No. 1 in Writ Petition No. 721 of 2016, filed the above Civil Application under Section 340 read with Section 195 of the Code of Criminal Procedure. The Applicant in his Application, after relying on the contents of the Application filed by the EOW (which Application is filed by the EOW after the filing of Writ Petition No. 721 of 2016 by the Respondents herein), has submitted that the Respondents have dishonestly and with mala fide intention made false and misleading submissions on oath, and that the Respondents have deliberately and dishonestly in their Civil Writ Petition No. 721 of 2016 concealed material facts and have made false statements, misrepresentations, thereby playing a fraud upon the Court by wrongful and illegal means, with the intention to obtain favourable orders. The Applicant has set out a Table under two columns. The first column is titled "False submissions in Writ Petition by the Applicant" and the second column is titled as "True facts". After setting out the said Table, the Applicant has submitted that the Respondents have made false allegations and submissions in Court proceedings and are therefore liable to be punished for having committed offences under Sections 199, 200, 463, 465, 466, 467, 468, 471, 474, 120 (B), 420 read with Section 34 of IPC.

20. In support of his submission, the Advocate for the Applicant has relied on the following case laws:

(i) Sanjeev Kumar Mittal v. State 3, wherein the Learned Single Judge of the Delhi High Court has held that, it is the legal duty of a party to state in the pleadings the true facts and if they do not, they must suffer the consequences and the Court should not hold back from taking action ; a party, whether he is a Petitioner or a Respondent, or a Witness, has to respect the solemnity of the proceedings in the Court and he cannot play with the Courts and pollute the stream of justice; It is cases like this, with false claims (or false defences) which load the Courts, cause delays,



consume judicial time and bring a bad name to the judicial system ; once falsehood is 3 174 (2010) Delhi Law Times 214 apparent, to not take action would be improper ; the judicial system has a right and a duty to protect itself from such conduct by the litigants and to ensure that where such conduct has taken place, the matter is investigated and reaches its logical conclusion, and depending on the finding which is returned in such proceedings, appropriate punishment is meted out ; making false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong Judgment and that is why it must be treated as an offence ; ordering of the preliminary inquiry also includes investigation by a state agency, where the nature is such that a private party in civil proceedings could not possibly gather and place before the Court certain facts, documents, etc. Many times, there can be suspicion, strong suspicion, or even suspicion that borders on conviction, and it is expedient in the interests of justice to proceed to lodge a complaint, but there may be no sufficient legal evidence on record at that time to so proceed.

(ii) In the case of H.S.Bedi v. National Highway Authority of India 4, the Delhi High Court has held that false evidence in vast majority of cases springs out of false pleadings, and the same would entirely banish from the Courts if false pleadings could be prevented ; unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens ; the justice delivery system has to be pure and should be such that the persons who are approaching the Courts must be 4 2016 (155) DRJ 259 afraid of making false claims ; those who indulge in immoral acts like false claims have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it, in the hope that truth would ultimately prevail; once it prima facie appears that an offence under Section 209 of Indian Penal Code has been made out and it is expedient in the interest of justice, the Court should not hesitate to make a complaint under Section 340 of Code of Criminal Procedure.

(iii) In the case of M/s.A-One Industries v. D.P.Garg 5, the Delhi High Court has relied on the following passage from the decision of the Hon'ble Supreme Court in the case of Dhananjay Sharma v. State of Haryana 6 :

".....Filing of false affidavits or making false statement on oath in Court aims at striking a blow at the Rule of Law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institution because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone reporting to filing of false affidavits or giving of false statements and fabricating false evidence in a Court of Law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that no one can be permitted to undermine the dignity of the Court and interfere with due course of judicial proceedings or the administration of justice".

5 1999 Cri.L.J. 4743 6 (1995) 4 JT (SC) 483 : (AIR 1995) SC 795)

(iv) In the case of *K.D. Sharma v. Steel Authority of India Limited and Ors.* 7 the Hon'ble Supreme Court has held that as per settled law, the party who invokes the extraordinary jurisdiction of the Supreme Court under Article 32 or of the High Court under Article 226 of the Constitution of India is supposed to be truthful, frank and open; he must disclose all material facts without any reservation, even if they are against him; he cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not disclose (conceal) other facts; the very basis of the writ jurisdiction rests in the disclosure of true and complete (correct) facts; If material facts are suppressed or distorted, the very functioning of the Writ Courts would become impossible; the petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the Court knows law but not facts". An Applicant who does not come with candid facts and "clean breast" cannot hold a Writ of the Court with "soiled hands". Suppression or concealment of material facts is not advocacy. It is jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the Applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the Rule Nisi and refuse to proceed further with the examination of the case 7 (2008) 12 SCC 481 on merits. If the Court does not reject the Petition on that ground, the Court would be failing in its duty. In fact, such an Applicant requires to be dealt with for Contempt of Court for abusing the process of the Court.

(v) In the case of *Sundeep Kumar Bafna vs. State of Maharashtra and another* (supra) the Hon'ble Supreme Court has observed that, "It is necessary to give a salutary clarion caution to all courts, including the High Courts, to be extremely careful and circumspect in concluding a judgment of the Supreme Court to be per incuriam..... An earlier judgment cannot possibly be seen as per incuriam a later judgment as the latter if numerically stronger only then it would overrule the former"

(vi) In the case of *Pritish v. State of Maharashtra and Ors.* 8, the Hon'ble Supreme Court has held that the scheme underlying Sections 340, 343, 238, 243 of the Criminal Procedure Code clearly shows that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that Court might file a complaint before the Magistrate for initiating prosecution proceedings; once the prosecution proceedings commence the person against whom the accusation is made has a legal right to be heard; such a legal protection is incorporated in the Scheme of the Code; the principle of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such persons should be proceeded against or not; the Court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken

8 2002 Cri.L.J. 548 before the Magistrate. At that stage, the Court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice.

(vii) In the case of *Union of India and Ors. v. Haresh Virumal Milani* 9, a learned Single Judge of this Court while considering the issue as to whether the Civil Court has right to use the powers

under the Criminal Procedure Code, has held that Section 195 of the Criminal Procedure Code does not restrict itself to only Criminal Courts, but the legislature has intended a wider meaning by using the word "Court"; thus the Civil Court while conducting preliminary inquiry or conducting other proceedings under the Criminal Procedure Code enjoys similar powers of a Criminal Court under the Criminal Procedure Code for the purpose of the said inquiry or proceedings under Section 340 of the Criminal Procedure Code; for complaint under Section 340 of Criminal Procedure Code by any Court, it is not necessary for the Judge to hear other side, but he may hear the Applicant. It is not a requirement to hear the person against whom proceedings are going to be initiated; thus, it is not necessary for the Court to give notice to the said person or even to hear that person.

(viii) In the case of Madangopal Banarasilal Jalan and others (supra), a Learned Single Judge of this Court, after referring to the decision of *Pritish vs. State of Maharashtra* (supra) cited by the learned Counsel for the applicant therein has held that there can be no dispute about the principle of law that at the stage of passing of 9 2018 (1) Bom.C.R. 769 an order directing the preliminary enquiry or even accepting the application filed under Section 340 of the Code of Criminal Procedure, the accused does not have any say in the matter. Referring to another decision of a Learned Single Judge of this Court in *Fareed Ahmed Qureshi vs. The State of Maharashtra* and another 10 relied on by the advocate for the applicant before the Learned Single Judge, the Learned Single Judge has held that when the facts available on record unmistakably point out that the accused has continued to make defamatory and false statements, even after those statements made previously by him have been found to be false, the Court has no option but to take cognizance of the complaint made by the aggrieved person and the Court shall be within its right to direct the Registrar ( Judicial) to file an appropriate complaint. I have gone through the Judgment in the case of *Fareed Ahmed Qureshi* (supra). From para 8 of the said order, it is clear that in that matter a case for filing complaint under Section 340 read with Section 195 (1) (b) of Cr.P.C. for making false statement before the Court, contrary to the record and for not disclosing true and correct facts, was made out.

21. Section 340 of the Criminal Procedure Code is reproduced hereunder:

"340. Procedure in cases mentioned in section 195.-

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-

section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of 10 2018 SCC online Bombay 960 a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195.

22. Clause (b) of sub-Section (1) of Section 195 of the CrPC is also reproduced hereunder:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance-

(b) (i) of any offence punishable under any of the following sections of

the Indian Penal Code,(45 of 1860) namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

23. Sections 193, 196, 199, 200, 205 to 211 and 228 of the IPC are reproduced hereunder:

"193. Punishment for false evidence.--Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of

being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Explanation 1.--A trial before a Court-martial; 1[\*\*\*] is a judicial proceeding.

Explanation 2.--An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.--An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.

196. Using evidence known to be false.--Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

199. False statement made in declaration which is by law receivable as evidence.--Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

200. Using as true such declaration knowing it to be false.--Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence. Explanation.--A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 to 200.

205. False personation for purpose of act or proceeding in suit or prosecution.--Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal

prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.--Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

207. Fraudulent claim to property to prevent its seizure as forfeited or in execution.--Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

208. Fraudulently suffering decree for sum not due.--Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Illustration A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

209. Dishonestly making false claim in Court.--Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

210. Fraudulently obtaining decree for sum not due.--Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

211. False charge of offence made with intent to injure.-- Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, 1[imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

228. Framing of charge.-- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon, such Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-

section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

24. When I was going through the reliefs sought by the Applicant, I noted that the Applicant has in prayer clause (iv) prayed that this Court be pleased to : " commit the Respondent Nos. 1 to 3 to custody in view of Section 340 (1) (d) of the Cr.PC as the Respondents have produced fabricated death certificate and false nomination, false share transfer form, false resolution and false

intimation letter and misguided the Court by further making misleading averments in the petition which are false and frivolous as the offences are non-bailable one". I therefore enquired from Mr. Nilesh Ojha, Advocate for the Plaintiff, whether notice has been issued to the Respondents. Mr. Ojha submitted that the Respondents cannot be heard at this stage as held by the Hon'ble Supreme Court in the case of *Pritish vs. State of Maharashtra* (supra) and by the Single Judge of this Court in the case of *Union of India vs. Haresh Milani* (supra). Though I subsequently was of the view, that the Respondents are not required to be heard in the matter, I would like to clarify that what is held in the above decisions is that there is no statutory requirement /mandate to afford an opportunity of hearing to the persons against whom the court might file a complaint, and therefore the Respondents in a case of Section 340 are not required to be heard as a matter of right. However, it cannot be disputed that if the Court feels the need to hear the Respondent in an Application under Section 340 Cr.P.C., the Court is not precluded from doing so, and therefore the submission of Mr. Ojha, that the Respondent cannot be heard at this stage is not accepted.

25. I have perused the above Application as well as Writ Petition No. 721 of 2016 along with all the annexures thereto. From the above facts it is clear that pursuant to the complaint filed by the Applicant, an FIR was filed vide C.R. No. 226 of 2009 punishable under Sections 465, 467, 468, 471, 420, 120 (B) and 34 of IPC against Jagdishchandra Pande (brother of the Applicant), Gulabchand Sarda, Vijaykumar Sarda (Accused Nos. 1, 2 and 3) and 16 others, inter alia, on the ground that they have fabricated the death certificate, the nomination form and have fraudulently transferred the said Property in favour of Jagdishchandra Pande and Gulabchand Sarda. The charge sheet was filed by the Investigating Officer (EOW, Mumbai) against Jagdishchandra Pande, Gulabchand Sarda and Vijaykumar Sarda (Accused Nos. 1, 2 and 3). Investigations have been stayed by this Court against the other 16 accused who are the Office-Bearers of the Society. Charge-sheet was issued by EOW to Accused Nos. 1, 2 and 3. However, since pending the trial, Accused No. 1 -- Jagdishchandra Pande and Accused No. 2 - Gulabchand Sarda passed away on 2 nd October, 2013 and 17th December, 2012 respectively, the Trial Court has framed charges only against Respondent No.3. The charges impleaded by the EOW in the charge-sheet need to be proved in a Court of competent jurisdiction. However, the trial is still pending.

26. As stated hereinabove, the Applicant simultaneously filed and pursued Application No. 1 of 2009 before the Deputy Registrar, Co-operative Societies, K/East Ward, Wadala, Mumbai, setting out all his allegations qua fabrication of documents and the fraudulent transfer effected in favour of Jagdishchandra Pande and Gulabchand Sarda by the Society, and sought removal of the names of Jagdishchandra Pande and Gulabchand Sarda from the records of the Society. The Deputy Registrar allowed the said Application No. 1 of 2009. Revision Application filed by the Society as well as Gulabchand Sarda were also rejected. However, whilst rejecting the Revision Application, the Divisional Joint Registrar, following the Judgment of this Court dated 14th June, 2011 in Writ Petition No. 1431 of 2011 in the case of *Nagesh Atmaram Madaye vs. Dy. Registrar, Co-operative Societies and others*, clarified that the disputes to title of property will be decided by Competent Courts and, therefore, the rights of Jagdishchandra Pande and Gulabchand Sarda in the said Property, if any, do not automatically come to an end; their remedy in law would remain to be intact and if they proceed in accordance with law to assert their title and succeed in getting appropriate declarations, the Respondent Society as well as the concerned parties will have to abide by the same.



27. By an Order dated 1 st July, 2013, passed by a single Judge of this Court in Writ Petition No. 3124 of 2013 filed by Vijaykumar Sarda against the Applicant and others impugning the orders passed by the Deputy Registrar, Co-operative Societies, dated 7 th July, 2009 allowing the application filed by the Applicant under Section 25A of the Act as also the Order passed by the Divisional Joint Registrar, Co-operative Societies, dated 16th October, 2012, rejecting the Revision Application, the Learned Judge, as stated hereinabove, has quashed and set aside both the Orders by observing that if it is the case of Respondent No. 1 (Applicant herein) that Gulabchand Sarda got his name entered in the membership register by playing fraud on the Respondent Society, the Respondent no. 1 could have availed the remedies open to Respondent No. 1 in law. An Application under Section 25A of the Act was not tenable and the same could not have been entertained by the Deputy Registrar and, therefore, both the orders suffer from jurisdictional error and are liable to be quashed. A Special Leave Petition filed by the Applicant herein impugning the Order passed by the Learned Single Judge dated 1st July, 2013, was also dismissed.

28. The Applicant, therefore, filed a dispute being Dispute No. CC/IV of 2014 before the Co-operative Court No. IV, Ballard Estate, Mumbai, on 25 th April, 2014, against the Society, the heirs of Jagdishchandra Pande (i.e. Respondents herein) and also the heirs of Gulabchand Sarda setting out in detail all that had transpired till the date of filing of the said dispute, including the allegations of forgery and fabrication qua the transfer of the said property in favour of Jagdishchandra Pande and Gulabchand Sarda including the fact that an FIR No. 226 of 2009 is registered against Accused Nos. 1, 2 and 3. In the said dispute, the Applicant has prayed for a declaration that the act of the Society to carry out the mutation entries in the records of the Society in the name of late Jagdishchandra Pande and late Gulabchand Sarda be declared as null and void and it be further declared that the Resolution dated 9 th January, 1994 passed in the Managing Committee of the Society to carry out the transfer of the said plot in the names of Jagdishchandra Pande and Gulabchand Sarda be declared as null and void. The said dispute is pending till date.

29. Pending the adjudication of the said dispute as well as the criminal complaint filed by the Applicant, the Applicant filed Application No. 1 of 2014 under Section 25A of the Act, once again setting out all the allegations of forgery and fabrication against Jagdishchandra Pande and Gulabchand Sarda. The Applicant now in his Application submitted that on 12 th July, 2014, he had requested the Society to remove the names of deceased nominee members who have ceased to be members of the Society from membership register of the Society in view of their death, and therefore, inter alia, sought a direction to remove the name of late Jagdishchandra Pande and late Gulabchand Sarda from membership as they ceased to be nominee members and have no subsisting interest in the said plot and shares. The said application was allowed by the Deputy Registrar, Co-operative Societies, K/East Ward, by his order dated 21 st May, 2015, by holding that the issue whether the nomination is genuine or bogus has no relevance so far as the said Application No. 1 of 2014 is concerned but is decided on the ground that the nominee members have no inheritable interest and that they have no authority to make further nomination. The Divisional Joint Registrar, by his Order dated 5th October, 2015, upheld the Order passed by the Deputy Registrar by holding that the Applicant filed the new Application under Section 25A of the Act before the Deputy Registrar, Co-operative Societies, Mumbai, for removal of the name of late Jagdishchandra Pande and late Gulabchand Sarda on fresh cause of action, i.e. both the members have passed away and

therefore their names are required to be removed.

30. The aforesaid order passed by the Deputy Registrar dated 21 st May, 2015 and the Order passed by the Divisional Joint Registrar, dated 5 th October, 2015 are impugned by the heirs of Jagdishchandra Pande in Writ Petition No. 721 of 2016. The impugned Orders are passed without going into the issues pertaining to any fraud or fabrication of documents only on the ground that Jagdishchandra Pande and Gulabchand Sardar were nominee members who had no right to further nominations and have in view of their demise ceased to be the members of the Society. The said limited issue has been challenged by way of Writ Petition by the heirs of Jagdishchandra Pande (Respondents herein). The issues pertaining to fabrication of documents and fraudulent transfer of property are the subject matter of the criminal complaint and the dispute pending before the Co-operative Court, and are not relevant for the purpose of deciding the above Writ Petition. The Respondents to the Writ Petition, therefore, have raised questions of law, as set out in the Petition and reproduced hereinabove, which are required to be decided in the Writ Petition. However, as stated hereinabove, the Respondents herein have annexed to the Writ Petition, the entire Application No. 1 of 2009 filed by the Applicant (being Exhibit -B); copy of the common order dated 16th January 2012, passed by the Divisional Joint Registrar in Revision Application No. 278 of 2009 and Revision Application No. 293 of 2009 (being Exhibit-C); copy of the Order dated 1 st July, 2013 passed in Writ Petition No. 3124 of 2013 (being Exhibit-D); copy of the Order dated 14 th February, 2014, passed in Special Leave to Appeal (Civil) No. 22737 of 2013 (being Exhibit-E); copy of the Dispute filed by the Applicant before the Co-operative Court (being Exhibit-F); copy of the Application No. 1 of 2014 (being Exhibit-G); copy of the impugned Order passed by the Dy. Registrar dated 21 st May, 2015 (being Exhibit-H) and copy of the impugned Order passed by the Divisional Joint Registrar dated 5 th October, 2015 (being Exhibit-I), wherein detailed submissions with regard to the property as well as allegations pertaining to forgery, fabrication and fraudulent transfer of the property are made by the Applicant, thereby not suppressing any allegations or submission from this Court as is sought to be alleged by the Applicant herein.

31. The Applicant in the above Civil Application relied very heavily on Criminal Application No. 129 of 2016 filed by the EOW in Criminal Writ Petition No. 522 of 2010 seeking vacation of the stay order qua investigations against the 16 other accused who are the Office-Bearers of the Society, in which certain statements are found qua the investigation and also certain facts in the matter have been recorded. As stated earlier, the said Application is filed by the EOW much after Writ Petition No. 721 of 2016 is filed by the Petitioners. Again, as stated hereinabove, the complaint, dispute, and the Applications filed by the Applicant containing the plethora of allegations against Jagdishchandra Pande, Gulabchand Sardar and Vijay Sardar have all been annexed by the Respondents herein to their Writ Petition No. 721 of 2016. Therefore, though in my view, the Respondents herein, who are Petitioners in Writ Petition No. 721 of 2016, have not made any false statements and/or any misrepresentation nor have they suppressed any facts from this Court, I now proceed to deal with the allegations of alleged false submissions as set out by the Applicant in the above Application.

32. It is alleged by the Applicant that the Respondents have made false submission in paragraph 1 of the Writ Petition that, " Mr. Jagdishchandra Pande who was member of Respondent No. 2 Society being joint owner along with late Mr. Gulabchand Sardar in respect of plot No. 49, Laxmi Niwas, J.B.

Nagar, Andheri (East), Mumbai-400 059, who had nominated them to receive his share and membership after his death". 32.1 In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that the Respondents have suppressed the material fact that neither Jagdishchandra Pande nor Gulabchand Sarda were owners of Plot No. 49. In fact, Nandkishor Ghasiram Pande and Bapulal Balmukund Jhawar were the joint owners of the said Property and the said Property was registered in their names. 32.2 This submission of the Applicant is incorrect and cannot be accepted. The said "true facts" or "material facts" are repeatedly set out by the Applicant in his Application No. 1 of 2009 filed before the Deputy Registrar of Co-operative Societies, K/East Ward, Mumbai and in the dispute filed by the Applicant and pending before the 4th Cooperative Court, Mumbai and also in the Application No. 1 of 2014 filed by him before the Deputy Registrar of Co-operative Societies, K/East Ward, Mumbai under Section 25A of the Act. All these proceedings and the orders passed therein are not only disclosed in the Writ Petition but copies of the same, as set out in detail in paragraph 30 of this Order, are annexed to the Writ Petition by the Respondents herein (Petitioners therein) and forms part of the record and there is no suppression as alleged by the Applicant. Even otherwise, the orders which are impugned before the Writ Court are passed only on the basis that Mr. Jagdishchandra Pande and Mr. Gulabchand Sarda were mere nominee members and being nominee members were not entitled to further nominate any other member in respect of their shares and therefore after their demise their names cannot continue as member of the said property and ought to be deleted. Therefore, the scope of the Writ Petition is limited only to the extent of the issues raised therein which are also set out in paragraph 17 above, and the issue as to title i.e. who is the owner of the subject plot is not the subject matter of the Writ Petition. The charges impleaded by the EOW in the chargesheet also need to be proved in the Court of competent jurisdiction. It therefore cannot be held that the Respondents herein (Petitioners therein) in view of the above quoted statement suppressed any facts or made false or incorrect statements on oath in order to mislead the Court or to obtain favourable orders.

33. The Applicant has next alleged that in paragraph 1 of the Writ Petition, the Respondents have made a false submission that, " Respondent No. 1 is the younger brother of late Jagdishchandra Pande and tenant of the Respondent No. 2 Society". 33.1. In support of his allegation, the Applicant has in the column captioned 'True Facts' again repeated his case namely that his father was the joint owner of the said plot and that Jagdishchandra Pande, Gulabchand Sarda and Vijaykumar Sarda conspired and usurped the property by tampering with the death certificate of his father despite there being no living person by the name of Nandkishor Bapulal Pande, and that on the basis of the tampered death certificate, Jagdishchandra Pande and Gulabchand Sarda became nominee members of the Society. It is further stated by the Applicant that Jagdishchandra Pande, Gulabchand Sarda and Vijaykumar Sarda prepared two fraudulent tenancy agreements having false recitals claiming to be owners. One of the tenancy agreements was signed by him in good faith as Jagdishchandra Pande was the real elder brother of the Applicant and head of the joint family. The Applicant has admitted that the Agreement signed by him shows him as tenant of Jagdishchandra Pande and Gulabchand Sarda, and also contains a recital to the effect that there is one person by the name of Nandkishor Bapulal who expired on 20th February, 1990. The Applicant however states that the said statements made in the Tenancy Agreement signed by him are false and the Tenancy Agreement is challenged by him in the City Civil Court and is also subject matter of Criminal FIR filed by the Applicant against the accused.

33.2 The Applicant (Respondent No.1 in the Writ Petition) is in fact the younger brother of Jagdishchandra Pande. The allegations qua the fabricated death certificate/nomination forms, fraudulent transfer have not been tested by the authorities whilst passing the Orders which are impugned in Writ Petition No. 721 of 2016 and therefore the same are not relevant for deciding the above Writ Petition. The scope of the Writ Petition is limited as explained hereinabove. 33.3 In any event, the Respondents have annexed to the Writ Petition all the documents i.e. the Applications filed by the Applicant making allegations of fraud, forgery, fraudulent transfer, etc., the dispute filed by the Applicant repeating all the allegations of fraud, forgery etc., the orders passed by the authorities/Court and have not suppressed any allegations in the Writ Court.

33.4 As far as the statement of the Respondents viz. that Respondent No. 2 is the tenant of the Society, apart from the fact that the same was not in issue before the authorities whose orders are impugned in the Writ Petition, the Applicant himself admits that he has signed an Agreement which contains a recital to the effect that the Applicant is a tenant of Jagdishchandra Pande and Gulabchand Sarda and it is also mentioned in the recital of the said Agreement that there was one person by the name of Nandkishor Bapulal Pande who passed away on 20 th February, 1990. Though the Applicant states that he has signed the Agreement in good faith and has challenged the same in the City Civil Court and that the same is the subject matter of the FIR filed by him, the fact remains that till date the Applicant has not obtained any order from any Court restraining any party or authority from relying upon the said Tenancy Agreement. In any event, the Applicant has submitted before the Authorities, as is found in the orders annexed to the Writ Petition itself by the Respondents, that he is a Member of the Society. Therefore, though the Respondents have stated in the Writ Petition that the Applicant is a tenant of the Respondent No. 2 Society, they have also annexed thereto the documents which contain his assertion that he is a Member of the Society and the question of the Respondents herein making any false statements or suppressing any facts with the intention to obtain favourable orders does not arise.

34. The Applicant has also alleged that in para 2 (a) of the Writ Petition the Respondents have made a false submission that, "late Mr. Jagdishchandra Nandkishore Pande along with late Mr. Gulabchand Sarda became members of the Respondent No. 2 Society in 1994 in respect of plot no. 49".

34.1. In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that the Respondents have suppressed the material fact that his father Jagdishchandra Pande and Gulabchand Sarda became nominee members of the Society based upon fabricated death certificate and false nomination in conspiracy with the Managing Committee Members of the Society and that he has filed a criminal FIR against them for fabricating death certificate, nomination forms, transfer forms, etc. 34.2. That late Jagdishchandra Pande along with late Gulabchand Sarda became members of Respondent No. 2 Society in 1994 is a fact. All the allegations qua the fabrication of documents as well as the FIR filed by the Applicant are found in great detail in the documents annexed to the Writ Petition by the Respondents. The Writ Petitioners (Respondents herein) have, therefore, placed all the facts including the allegations made by the Applicant and the orders passed by the authorities, before the Writ Court. In any event, as explained hereinabove, the issue involved in the Writ Petition is very limited and is confined to the questions

of law raised by the Petitioners in the Writ Petition (reproduced in paragraph 17 hereinabove), it was not necessary for the Petitioners to set out the facts which, according to the Applicant, have been suppressed. In any event, the same have not been suppressed and the question therefore of the Respondents having suppressed any facts or having made false or incorrect statements on oath in order to mislead the Court or to obtain favourable orders is incorrect and cannot be accepted. Here, it would be very pertinent to refer to the observations made by the learned Single Judge of the Delhi High Court in the case of Sanjeev Kumar Mittal (supra), wherein the learned Judge when considering at length, the issue pertaining to false averments in pleadings, has succinctly stated that making false averments is an attempt at inviting the court into passing a wrong judgement and that is why it must be treated as an offence. This observation strengthens the view taken by me hereinabove, that the Petitioners in the Writ Petition have confined the scope of the Writ Petition filed by them to mere questions of law raised therein and reproduced in paragraph 17 hereinabove, and thus there is no scope to accept the argument of the Applicant herein that the Petitioners are making an attempt at inviting the court into passing a wrong judgement, more so when, as stated above, the Petitioners have annexed all the documents set out by me at length in paragraph 17 above.

35. It is next alleged by the Applicant that in paragraph 2 (d) of the Writ Petition, the Respondents herein (Petitioners therein) have made a false submission that, " the Respondent No. 1, in total disregard of the orders of the Hon'ble High Court and Hon'ble Supreme Court (Exht. E and F) again approached Ld. Dy. Registrar, K/E Ward, Mumbai, by filing Application No. 1 of 2014 under Section 25-A." 35.1. In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that there was no order, either from the High Court or from the Supreme Court which restricts the Applicant from approaching the Dy. Registrar under Section 25A and the question of disregard of the order does not arise. 35.2. In my view, the subject Orders speak for themselves, and therefore the question of making any false statement with the intention of obtaining a favourable order does not arise. Thus the provision of S. 340 of the Code of Criminal Procedure is not attracted.

36. It is next alleged by the Applicant that the Respondents have made false submissions in paragraph 2 (d) of the Writ Petition that ". .... obtain favourable order being order dated 21st May, 2015 passed by the Ld. Dy. Registrar without disclosing the earlier Application No. 1 of 2009 filed by the Respondent No.1 himself for relief in similar nature".

36.1 In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that the cause of action in Application No. 1 of 2009 was different than the new Application which was filed in the year of 2014 and, therefore, it was not required.

36.2 The above submission is made by the Respondents herein in the Writ Petition filed by them. However, the Respondents herein have annexed to the Writ Petition both the Applications i.e. Application No. 1 of 2009 and Application No. 1 of 2014 as well as the orders passed therein which speaks for themselves. The Applicant has, while alleging that the said statement is false/incorrect, submitted that the true fact is that the cause of action in the two Applications was different. The Applicant, instead of filing his reply to the Writ Petition, has in his above Application tried to answer the allegations made by the Respondents in the Writ Petition. Since both the applications along with

the orders passed thereon are annexed to the Writ Petition, the Writ Court will accept or reject the submission of the Respondents herein on merits and the question of the Respondents herein making any false submission/s or suppressing any fact/s with the intention to obtain favourable orders does not arise .

37. It is alleged by the Applicant that the Respondents have made false submission in paragraph 2 (d) of the Writ Petition that " the orders of the Hon'ble High Court and the Hon'ble Supreme Court which the debarred the jurisdiction of the Ld. Divisional Joint Registrar to entertain and decide the Applications under Section 25-A of the Maharashtra Co-operative Societies Act, 1960 though did not have any locus standi to file the same".

37.1 In support of his above allegation, the Applicant has in the column captioned "True Facts" denied and disputed the above submissions made by the Respondents herein in the Writ Petition.

37.2 The Applicant has relied on incomplete sentences, and has not bothered to correct the typographical errors. In any event, the orders of the Hon'ble Supreme Court and the High Court are placed by the Respondents herein before the Writ Court. The Applicant instead of filing his Affidavit-in-Reply to the Writ Petition is trying to answer/deal with the submissions made in the Writ Petition in the present Application, which is filed under Section 340 of the Cr.P.C. Needless to add that the Writ Court will consider the judgments placed before it and decide whether the interpretation sought to be given by the Respondents herein to the Judgments and orders is correct or not. Therefore the question of the Respondents herein making any false statements or suppressing any facts with the intention to obtain favourable orders does not arise.

38. It is alleged by the Applicant that in paragraph 4 (a) of the Writ Petition the Respondents herein (Petitioners therein) have made a false submission that "... and the Ld. Deputy Registrar as well as the Divisional Joint Registrar also failed to suo motu implead the heir and/or the legal representative i.e. the Petitioners herein of late Mr. Jagdishchandra Pande as party Respondents to the proceedings though their rights, interest and/or title were to be affected".

38.1 In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that Jagdishchandra Pande himself was enrolled as a nominee member in 1994 with the help of fabricated death certificate of Nandkishore Bapulal, a non-existing person and false nominee. Being nominee member, he was not entitled to make nomination and hence the question of the right, title and interest does not arise. 38.2 The Applicant has instead of filing his Affidavit in Reply, once again, tried to deal with the submission made by the Respondents herein with which he does not agree.

38.3 All the documents containing the allegation of fabrication of nomination form, death certificate, etc. are placed by the Respondents herein before the Writ Court along with the Writ Petition. The Respondents herein have in the Writ Petition submitted that the learned Deputy Registrar as well as the Divisional Joint Registrar failed to suo motu implead the heirs and/or the legal representatives of late Mr. Jagdishchandra Pande as party Respondents to the proceedings, though their right, title and interest were to be affected. This submission is denied by the Applicant

on the ground that the same is incorrect. The Applicant has therefore once again only tried to answer the averments made in the Writ Petition. The correctness of the said averments will be decided by the Writ Court. Since the stand repeatedly taken by both the parties in their proceedings and the orders passed thereon by the authorities are produced before the Writ Court along with the Writ Petition by the Respondents herein (Petitioners therein), the allegation that the Respondents herein have made any false submissions or suppressed any facts with the intention to obtain favourable orders cannot be accepted.

39. It is alleged by the Applicant the Respondents herein (Petitioners therein) in paragraph 2 (d) of the Writ Petition have made a false submission that, ".... it is pertinent to note that with mala fide intentions and ulterior motives, none of the heirs/legal representatives of late Mr. Jagdishchandra Pande and Mr. Gulabchand Sardar were made party to the Application No. 1 of 2014, though they were necessary parties as their rights being heirs were to be affected."

39.1 In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that Jagdishchandra Pande and Gulabchand Sardar were nominee members, that too based on false and fabricated documents; the Hon'ble Supreme Court has held that a nominee is just a trustee till the heirs of the deceased members come on record. Therefore, the nominee cannot further nominate and the question of their rights being affected does not arise.

39.2 In my view, the same is the submission made by the Respondents in the Writ Petition, which will be decided on merits by the Learned Judge hearing the Petition. The Applicant has tried to exert every nerve to make out a case covered under Section 340 CrPC, but is not successful in doing so. In the present Application, he has tried to deal with/answer the Writ Petition on merits, which cannot be allowed.

40. The Applicant has next alleged that in paragraph 4 (a) of the Writ Petition, the Respondents herein (Petitioners therein) have made a false submission that, ".... And the Ld. Deputy Registrar as well as Divisional Joint Registrar also failed to suo motu implead the heir and/or legal representative i.e. the Petitioner herein of late Mr. Jagdishchandra Pande as party respondents to the proceedings though their rights, interest and/or title were to be effected".

40.1 In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that Jagdishchandra Pande himself was enrolled as a nominee member in 1994 with the help of a fabricated death certificate of Nandkishor Bapulal, a non existing person, and false nomination. According to the Applicant, being a nominee member he was not entitled to make a nomination and therefore the question of their right, title and interest does not arise.

40.2 Since what is already stated above also applies to the above submission/allegation, the same is not repeated.

41. It is alleged by the Applicant that the Respondents herein (Petitioners therein) have made false submission in paragraph 4 (c) of the Writ Petition that, ".... Reliefs which are identical to the reliefs sought by him in subject application No. 1 of 2014 which is a fraud played on the judicial system" .

41.1 In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that it was the Respondents' father who played fraud in 1994 and became a nominee member of the Society on the basis of fraudulent death certificate and now his son who is Respondent No. 1 is playing the fraud with the judicial system by claiming right, title and interest which he does not have. 41.2 The Applicant has in the present Application once again relied on a part of the sentence and has tried to deny and deal with the submissions made by the Respondents herein (Petitioner therein) in the Writ Petition. Since what is already stated above also applies to the above submission/allegation, the same is not repeated.

42. It is alleged by the Applicant that the Respondents have made false submissions in paragraph 4 (c) of the Writ Petition that, ".... Thus the order of Dy. Registrar in subsequent Application No. 1 of 2014 and subsequent order of Divisional Joint Registrar contravenes and infringes the principles analogous to res judicata as the subsequent application for relief similar to one which were earlier rejected by Hon'ble High Court and Hon'ble Supreme Court should have been even entertained by Dy. Registrar and Divisional Joint Registrar leave apart decide on merits". 42.2 In support of his above allegation, the Applicant has in the column captioned "True Facts" alleged that since the cause of action under both the applications were different, it does not contravene nor infringes the principal analogous to res judicata. 42.3 The Applicant has in the present Application once again tried to deny and answer the submissions made by the Respondents herein (Petitioner therein) in the Writ Petition. Since what is already stated above also applies to the above submission/allegation, the same is not repeated.

43. Lastly, it is submitted by the Applicant that in paragraph 4 (d) of the Writ Petition, the Respondents herein (Petitioners therein) have made a false submission that, ".... The impugned orders of the Dy. Registrar and Divisional Joint Registrar obtained by exercising fraud".

43.1 According to the Applicant, both the orders have been passed on merits. 43.2 The Applicant has in the present Application instead of filing his reply to the Writ Petition has once again tried to deny and deal with the contents of the Writ Petition. The Writ Court is not going to be mislead or proceed to grant favourable orders to the Respondents on the basis of the said sentence/statement in the Writ Petition. The impugned orders will be tested by the Writ Court before passing any orders. Since what is already stated above also applies to the above submission/allegation, the same is not repeated.

44. In view of the above, I am satisfied that there is no substance in the above Civil Application as the Respondents have not suppressed any facts or documents which are relevant for the purpose of deciding the above Writ Petition and have also not made any attempt to mislead the Court in the manner alleged or otherwise or with the intention alleged or otherwise. The Respondents herein (Petitioners in the Writ Petition) have been transparent with the Court by annexing to their Writ Petition all the Applications filed by the Applicant along with the orders passed therein and also the dispute filed by the Applicant, in which proceedings and orders, the case of the Applicant is set out in its entirety. Therefore, the question of holding that the Respondents have in the Writ Petition made incorrect statements or have suppressed any facts or documents or have relied on documents, with the intention to mislead the Court and obtain favourable orders, as alleged by the Applicant,



does not arise and the case law cited by the Applicant in this regard also renders no assistance to his case. Since the Applicant has failed to make out a prima facie case for grant of any relief under Section 340 of Criminal Procedure Code, the above Civil Application is dismissed.

( S.J.KATHAWALLA, J. )