

Satynarayan Nandkishor Pande vs Vijaykumar Gulabchand Sarda And Anr on 22 December, 2018

Author: S.J. Kathawalla

Bench: S.J. Kathawalla

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 944 OF 2018
IN
WRIT PETITION NO. 1455 OF 2016

Satyanarayan Nandkishor 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.4

Versus

1. Vijaykumar Gulabchand Sarda,)
Age : 54 years, Occupation : Business)
R/o. 49, Laxmi Niwas, J.B. Nagar, Andheri (East))
Mumbai - 400 059)
2. Kalpana Vijaykumar Sarda,)
Age : 54 years, Occupation : Housewife)
R/o. 49, Laxmi Niwas, J.B. Nagar, Andheri (East))
Mumbai - 400 059)...Respondents

Mr. Nilesh Ojha, instructed by Ms.Reena Rana, Mr.Vijay Kurle, Mr.Aameer Kale,
Ms.Madhuri Gamre, Ms.Shweta Doshi, Ms.Tanvi Kamblu 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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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. 4 in Civil Writ Petition No. 1455 of 2016), against Mr. Vijaykumar Gulabchand Sarda and Kalpana Vijaykumar Sarda, Respondent Nos. 1 and 2 abovenamed (Petitioners in Civil Writ Petition No. 1455 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 482 of 2018 in Writ Petition No. 721 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 Civil Application No. 482 of 2018 in Writ Petition No. 721 of 2016 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 Civil Applications, and accordingly I have done so. The Civil Applications were reserved for orders on 23rd 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 matters. 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, Nitin 3 / 61 CA-944-2018-3.doc instructed by M/s. Shiralkar and Company urged 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 14th September, 2018, the assignment pertaining to the said matter was changed with effect from 17th September, 2018. However, on 18th 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 25th 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 25th 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 17th 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 19th December, 2018, Mr. Ojha filed a praecipe and mentioned the matter before Nitin 4 / 61 CA-944-2018-3.doc 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 2. 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. Respondent No. 1 is the son of Gulabchand Sarda who passed away on 17th December, 2012. Respondent No. 2 is the daughter-in-law of the said Gulabchand Sarda and wife of Respondent No.1.

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 2 nd October, 2013 and 17th December, 2012, respectively) had forged the death certificate of the Applicant's father and with the help of false and fabricated documents and in connivance with the office-bearers of Shree Rajasthan Co-operative Housing Society 1 (2014) 16 SCC 623 2 2018 SCC Online Bom 3525 Nitin 5 / 61 CA-944-2018-3.doc 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 13 th 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, 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.

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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 (the Society), Jagdishchandra Pande and Gulabchand Sarda 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 names

of Jagdishchandra Pande and Gulabchand Sarda from the records of the Society with a prayer that the names of Jagdishchandra Pande and Gulabchand Sarda be deleted from the record of Respondent No. 2 Society. The Deputy Registrar, vide his Order dated 7 th July, 2009, directed the Society to delete the names of Jagdishchandra Pande and Gulabchand Sarda from the record of Respondent No. 2 Society.

9. From the Order passed by the Deputy Registrar, two Revision Applications were filed by the Society and by Jagdishchandra Pande and Gulabchand Sarda. The Divisional Joint Registrar, Co-operative Societies, Mumbai by his common Order dated 16th October, 2012 rejected the Revision Applications and confirmed the Order of the Deputy Registrar dated 7th July, 2009.

10. The heirs of Gulabchand Sarda i.e. the Respondents herein, filed Writ Petition No. 3124 of 2013 before this Court impugning the Order passed by the Deputy Registrar, Co-operative Societies, Mumbai, dated 7 th July, 2009, as also the Nitin 7 / 61 CA-944-2018-3.doc Order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, dated 16th October, 2012. 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 inter alia 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.

11. Special Leave Petition filed by the Applicant before the Hon'ble Supreme Court of India, impugning the Order dated 1st July, 2013 in Writ Petition No. 3124 of 2013, came to be dismissed by the Hon'ble Supreme Court.

12. As set out in my Order dated 22nd December, 2018 passed in Civil Application No. 482 of 2018 in Civil Writ Petition No. 721 of 2016, 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 and Gulabchand Sarda (Respondents herein) on 25th 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 9 th 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. The said dispute filed by the Applicant is pending before the Co-operative Court, till Nitin 8 / 61 CA-944-2018-3.doc date.

13. Again, as set out in my Order dated 22nd December, 2018 passed in Civil Application No. 482 of 2018 in Civil Writ Petition No. 721 of 2016, the Applicant in the meantime also filed an 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 subsist in them with regard to the subject property, and therefore the Respondent Society be directed to remove the names of Jagdishchandra Pande and Gulabchand Sarda from the membership of the subject property i.e. 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. The Respondents herein (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 confirmed the Order passed by the Deputy Registrar. Being aggrieved by the said Orders passed by the Deputy Registrar dated 21 st May, 2015 and the Divisional Joint Registrar dated 5th October, 2015, the heirs of Jagdishchandra Pande have filed Writ Petition No. 721 of 2016 before this Court Nitin 9 / 61 CA-944-2018-3.doc seeking quashing and setting aside of the said orders. The said Writ Petition is pending before this Court. In that Writ Petition too, the Applicant has filed Civil Application No. 482 of 2018, under Section 340 read with Section 195 of the Code of Criminal Procedure, against the heirs of Jagdishchandra Pande, on the ground that they have made false statements in the Writ Petition knowing the same to be false and have also suppressed the true facts with the intention of misleading the Court and obtaining favourable orders. The said Civil Application No. 482 of 2018 is dismissed by my detailed Order dated 22nd December, 2018, and as stated hereinabove a major portion of the contents of the said Civil Application No. 482 of 2018 overlaps the contents of the present Civil Application.

14. As stated earlier, Gulabchand Sarda, the father of Respondent No.1 and father-in-law of Respondent No. 2 died on 17 th December, 2012 at Mumbai. Prior to his death, he had filled up the Nomination Form and submitted to the Society, wherein he had nominated the Respondents herein (his son and daughter-in-law) in respect of the said plot No. 49. In view thereof, on 16th July, 2013, the Respondents forwarded certain documents to the Society and sought transfer of membership, as well as his shares in their favour. The Society called upon the Respondents herein to pay the legal charges amounting to Rs. 89,588/- which the Society had to incur in view of the litigation pertaining to the said plot No. 49. The said amount was paid by the Respondents herein, after which the Society addressed them a letter dated 12 th August, 2013, stating that the Application for membership will be put up before the Managing Nitin 10 / 61 CA-944-2018-3.doc Committee for its consideration. After exchange of certain correspondence, the Society rejected the Application of the Respondents herein on 3 rd October, 2013 on the ground that the matter is sub judice. Being aggrieved by the decision of the Society, on 10th December, 2013, the Respondents herein filed an Appeal/Petition under Section 23 (2) of the Act before the Deputy Registrar, Co-operative Societies, K/East Ward, Mumbai, seeking necessary direction against the Society to transmit the share certificates in the name of the Respondents herein.

15. On 10th March, 2014, Shree Rajasthan Cooperative Housing Society filed its detailed say/reply to the Appeal/Petition filed by the Respondents herein under Section 23 (2) of the Act. In its reply, the Society has set out in detail the facts, as perceived by it from the date of the formation of the Society till the date of filing of its reply. The Society has explained in its reply that some time around the year 1946, one Shri Shreeniwasji Bagarka along with others mooted the idea of forming the said Society and after acquiring the land, divided the same into 98 plots to be allotted to its members; that the said Society came to be registered and since then it is functioning smoothly; that some time in the year 1947, one plot No. 23 which is later re-numbered as Plot No. 49 of the said Society came to be allotted to one Bapulal Nandkishore and upon the request of the said party, on 1 st September,

1950, the name of the allottee was modified to Shri Nandkishore Bapulal. As can be seen from the records of the Society, the said individual/allottee even contested the election of the Managing Committee of the Society under the name of Shri Nandkishore Bapulal and was elected; that the Nitin 11 / 61 CA-944-2018-3.doc minutes of the meeting further reflect that the said allottee Shri Nandkishore Bapulal was Nandkishore Pande ; thereafter as it appears from the records, for years or rather decades the Society corresponded with the said allottee in the name of Shri Nandkishore Bapulal and in response to the correspondence, the Society received letters under the name of Nandkishore Bapulal, who would mostly sign the same as 'Nandkishore' ; that in fact an Agreement dated 29th August, 2002 was executed by and between Gulabchand Sarda, Jagdishchandra Pande, the Applicant herein and his mother - Rukmini Pande showing that Nandkishore was known as Nandkishore Bapulal. The Society has in its response further pointed out in detail how the Nomination Form duly signed by Nandkishore Bapulal was received by the Society; how the share transfer form and handwritten application for membership was submitted to the Society duly signed by the said Gulabchand Sarda and Jagdishchandra Pande, the correspondence received by the Society from Gulabchand Sarda, Jagdishchandra Pande, the Applicant herein and the mother of the Applicant herein, and the claims as well as the allegations made therein. The Society has pointed out that the then Deputy Registrar Co-operative Societies K/East Ward had by his Letter dated 1st December, 2008, addressed to the Applicant, recorded the lapses and defects in the said Nomination Form. The Society has also pointed out in its response that it will be interesting to note that the Applicant (Satyanarayan Pande) while acquiring the tenancy in respect of a flat in Plot No. 49 has paid transfer fee amounting to Rs. 8,25,000/- to Gulabchand Sarda, father of Respondent No. 1 herein Nitin 12 / 61 CA-944-2018-3.doc and to Jagdishchandra Pande and have in the said Agreement referred to one Nandkishore Bapulal as the allottee. The Society has also submitted that the facts set out in its response clearly reveal that the Society is being dragged into litigation in the inter se dispute between the Applicant and the heirs of Gulabchand Sarda. The Society has further stated that they have received one more nomination form of Jagdishchandra Pande, nominating his son to the membership of his share and that the Society has rejected his application also. The Society also submitted in its reply that though allegations and counter allegations are made by the Pande Group and the Sarda Group, none of them have thought it fit and appropriate to settle the title dispute before a Court of civil jurisdiction; that therefore the issue regarding who is entitled to the ownership and consequently the membership is not yet decided; that the Applicant has also filed a Complaint making serious allegations and levelling charges inter alia against the office-bearers of the Society, which is registered in the form of C.R. No. 226 of 2009 with the Andheri Police Station ; a charge-sheet was filed against Jagdishchandra Pande as well as Gulabchand Sarda and his son Vijaykumar Sarda (Respondent No. 1 herein). The Society submitted that the issue which, inter alia, arises for consideration before the authority i.e. the Deputy Registrar of Co-operative Societies, K/East Ward, Mumbai is whether a nominee member could further nominate anyone else to succeed and to become member after the death of such nominee member. The Society submitted that the legal position is that a nominee member is only a trustee of the heirs and is ultimately required to exercise the Nitin 13 / 61 CA-944-2018-3.doc duty as a trustee ; therefore, even assuming that Gulabchand Sarda was a member and further assuming that the Society has accepted the nomination, the question remains whether such a nominee member, who has no right in the property and is admitted to membership only as a nominee member, could further nominate a person of his or her choice, and consequently whether the nomination of Gulabchand Sarda can be

permitted to be enforced by the authority, at the instance of the present Petitioners.

16. On 24th March, 2014, the Respondents herein filed their rejoinder to the said response of the Society dated 14 th March, 2018, wherein they submitted that the Society has tried to elaborate their say by stating therein details which have no relevance to the Petition. The Respondents, inter alia, pointed out that it is not the duty of the Respondent Society to decide as to who are the successors to the property i.e. who has inherited the property after the death of the original member. The Respondents herein submitted that once the name of the Member is registered in the Membership Register of the Society, the Society should not be concerned whether the member holds the membership as a trustee or as an owner. The Respondents therefore submitted that they be admitted as Members of the Respondent Society and the Respondent Society be directed to endorse the share certificate in the name of the Petitioners as per the bye-laws of the Society.

17. On 24th March, 2014, the Applicant herein filed an Application to be joined as an intervenor in the Appeal/Petition filed by the Respondents herein, impugning the decision of the Society rejecting their application to be taken on record Nitin 14 / 61 CA-944-2018-3.doc as members of Plot No. 49 under Section 23 (2) of the Act. In the said Application, the Applicant has submitted that the original plot No. 49 in the said Society was allotted to two individuals i.e. Nandkishore Ghasiram Pande (father of the Applicant) and Bapulal Balmukund Jhawar. Accordingly, Share Certificate No. 20 was issued in the name of Bapulal Nandkishore. The said plot was registered in the records of the Society in the name of Bapulal Nandkishore since inception of the Society i.e. since the year 1947-48 and they were given membership of the Society with a common share certificate issued in their names 'Bapulal Nandkishore'. Later on a Lease Deed dated 14th January, 1961 was signed by the Society 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 Nandkishore"; that the Applicant later came to know that his brother Jagdishchandra Pande and Gulabchandra Sarda have fraudulently transferred the said plot in their names; therefore in order to ascertain the truth, he, through his Advocate, wrote a letter dated 15 th October, 2008 to the Society for the purpose of inspection of the original documents submitted by Jagdishchandra Pande and Gulabchand Sarda for the transfer of the said plot. Since the office-bearers of the Society did not cooperate with him, he was compelled to file a Complaint on 24th October, 2008 before the Deputy Registrar, Co-operative Societies, who conducted inspection of the records of the Society in respect of the said plot and after taking inspection of the records, wrote a letter dated 1 st December, 2008 to the Applicant which showed how the said plot was fraudulently transferred in the names Nitin 15 / 61 CA-944-2018-3.doc of Jagdishchandra Pande and Gulabchand Sarda ; that after persistent follow up he was able to get the documents in relation to the alleged transfer of the said plot through the Deputy Registrar under the RTI Act, which included the letters written by the Society to Gulabchand Sarda and Jagdishchandra Pande; that Jagdishchandra Pande along with the office-bearers of the Society interpolated the records of the Society in a highly systematic manner so as to grab the property of the deceased member; that Jagdishchandra Pande and Gulabchand Sarda have no right to continue as the members of the Society because the nomination form itself is bogus, fabricated, invalid and bad in law; that an FIR No. 226 of 2009 was registered against Jagdishchandra Pande, Gulabchand Sarda, Vijaykumar Sarda and 16 office-bearers of the Society under Sections 415, 465, 468, 471 read with Section 34 and 420 of the IPC; that Jagdishchandra

Pande, Gulabchand Sarda and Vijaykumar Sarda, in connivance with each other fabricated the death certificate of Nandkishore Ghasiram Pande by applying white ink on Ghasiram and by writing Bapulal over the same ; that in addition to this, Vijaykumar Sarda, Gulabchand Sarda along with Jagdishchandra Pande also fabricated the nomination form and thus played a fraud in connivance with the Managing Committee of the Society; that the Application filed by the heirs of Gulabchand Sarda seeking transfer of the share in respect of Plot No. 49 should not be allowed and the Applicant may be permitted to join as intervenor.

18. On 14th June, 2014, the Applicant herein also submitted an Application to the Society for being accepted as member in respect of the said property, on the Nitin 16 / 61 CA-944-2018-3.doc ground that he is one of the legal heirs of Nandkishore Pande. The said Application was rejected by the Society on 24th July, 2014, on the grounds that he has not submitted the original share certificate; that the papers submitted by him are incomplete and he has not submitted the instrument of transfer, duly stamped and registered. The Applicant too filed an Appeal before the Deputy Registrar, Co- operative Societies impugning the decision of the Society.

19. On 5th March, 2015, the Respondents herein filed their final written arguments before the Deputy Registrar of Co-operative Societies, in which they also dealt with the submissions in respect of the Appeal under Section 23 (2) of the Act filed by the Applicant.

20. The Deputy Registrar, Co-operative Societies, K/East Ward, by his common Order dated 21st May, 2015, disposed of the Appeals filed by the Applicant herein as well as the Respondents herein. In the said Order, the Deputy Registrar has recorded that, according to the Respondents herein, they are nominated by Gulabchand Sarda who died on 17th December, 2012, which nomination was duly confirmed by the Society vide its letter dated 20th November, 2003; that they have paid all the dues of the Society ; their application has been rejected by the Society on the ground that the matter is sub judice as intimated vide letter dated 8 th October, 2013; that the Respondent Society is under a legal obligation to transfer the said shares and the said plot in their names on the death of the members. In the said order, the Deputy Registrar has also set out in detail, the submissions made by the Society in its reply to Nitin 17 / 61 CA-944-2018-3.doc the Appeal filed by the Respondents herein. The Deputy Registrar has also set out in detail all the submissions/allegations made by the Applicant herein in his Intervention Application including the allegation that Jagdishchandra Pande and Gulabchand Sarda had conspired and colluded with each other and with some of the office-bearers of the Respondent Society and have fabricated and forged the nomination papers and also tampered/forged the certified true copy of the death certificate issued by the Municipal Corporation. The Deputy Registrar has recorded that the Applicant herein had contended that the Intervention Applications filed by him and Shri Bapulal Jhawar are under Section 30 of the Act and Rule 25 (2) of the Maharashtra Co-operative Societies Rules, the Respondent Society and its Managing Committee is aware that the Applicant herein is the son of Nandkishore Ghasiram Pande and therefore the issue as regards heirship and inheritance of the said plot is not in question. The Deputy Registrar has thereafter held that the said nomination cannot be considered as legal and valid. The Deputy Registrar has also recorded that the Applicant has filed a criminal complaint being FIR No. 226 of 2009 against Jagdishchandra Pande, Gulabchand Sarda, Vijaykumar Sarda and 16 Office-bearers and Committee members of the Respondent Society ; this Court has stayed the

investigation against the Committee Members and that the Writ Petitions filed by the Committee Members in this Court are pending ; however, the Police have investigated the complaint against Gulabchand Sarda, Jagdishchandra Pande and Vijaykumar Sarda and also filed charge- sheet against them ; during the pendency of the said prosecution, Jagdishchandra Nitin 18 / 61 CA-944-2018-3.doc Pande and Gulabchand Sarda expired and therefore the Learned Metropolitan Magistrate has framed charges against Vijaykumar Sarda under Sections 465, 467, 468, 471, 420 and 120 (B) read with Section 34 of the IPC. The Deputy Registrar has held that the issue of invalid nomination by Nandkishore Bapulal and admission of Jagdishchandra Pande and Gulabchand Sarda as nominee members is not of much significance at this point of time, in view of the fact that both the said nominee members have passed away. The Deputy Registrar has thereafter held that it is clear that late Gulabchand Sarda was merely a member of the Respondent Society, admitted on the basis of nomination, that too, without any interest in the property as legal heir of the deceased member and it is now well settled that the nominee has no legal right in the property and he has to act as the trustee for the benefit of the legal heirs of the deceased member and that a nominee cannot make further nomination. The nomination made by Gulabchand Sarda in favour of Respondents herein is therefore not valid and legal and as such the Respondent Society is therefore not under any obligation to admit them as members. The Deputy Registrar further proceeded to hold that the Applicant is undisputedly one of the sons and legal heir of Nandkishore Ghasiram Pande. Since there is no nomination by Nandkishore Ghasiram Pande, and even otherwise no nominee member has survived, the estate of late Nandkishore Ghasiram Pande and late Shri Bapulal Jhawar has remained unrepresented ; that the Applicant and the intervenor No. 2 (Ramesh Jhawar) are ready and willing to furnish all necessary undertakings and indemnity and hold the Nitin 19 / 61 CA-944-2018-3.doc shares in said property for the benefit of the heirs of late Nandkishore Ghasiram Pande and late Shri Bapulal Jhawar. In view thereof, the Appeal filed by Respondent Nos. 1 and 2 herein being Appeal No. 21 of 2013 filed under Section 23 (2) of the Act was rejected and the Appeal filed by the Applicant under Section 23 (2) was allowed, with a direction to admit the Applicant herein as a member on his executing an undertaking to the effect that he will hold Plot No. 49 and shares in respect thereof for the benefit of the other legal heirs of late Nandkishore Ghasiram Pande and Bapulal Jhawar.

21. Being aggrieved by the Order passed by the Deputy Registrar dated 21 st May, 2015, the Respondents herein filed a Revision Application on 4 th June, 2015, before the Divisional Joint Registrar, Co-operative Societies (Appeals) being Revision Application No. 184 of 2015. Once again, the facts as well as the contentions raised and recorded hereinabove were repeated by the Respondents herein in the said Revision Application. In the said Revision Application, the Respondents herein contended that the Society kept on harping on sub judice cases without referring to anything. The Respondents therein also contended in the said Revision Application that the issue of ownership and inheritance is not the question to be decided by the Co-operative forum but by a Civil Court.

22. The Respondents herein also filed an Application in the said Revision Application seeking stay of the Order passed by the Deputy Registrar.

23. The Applicant has filed his detailed say/written submissions dated 30 th July, 2015 to the above Revision Application. In the said say/written submission, Applicant Nitin 20 / 61 CA-944-2018-3.doc has given the entire history of the matter right since 1946 when the said Rajasthan Co- operative Housing Society was registered, the reasons why the nomination form is bogus and the a reason/s for asserting that the death certificate is tampered with/manipulated, the manner in which the share transfer form was submitted and the Resolution dated 9th January, 1994 was passed by the Society ; the steps that the Applicant took upon discovering the fraud, including filing of the criminal complaint filed by him, the application filed by him with the Society dated 14 th June, 2014 for the membership on the ground that he is one of the legal heirs of late Nandkishore Ghasiram Pande, the original member and allottee of plot No. 49, and how the Respondent Society rejected his application by their letter dated 24 th July, 2014 on grounds that he has not submitted the original share certificate; that the papers submitted by him are incomplete and he has not submitted the instrument of transfer duly stamped and registered. The Applicant has also submitted that the nomination and admission of late Gulabchand Sarda and another as members is found to be forged/illegal on police investigation and that the nomination form and the illegal admission of Gulabchand Sarda as member on the basis of such bogus nomination are sub judice and the criminal court at Mumbai has already framed charge against the Respondent No. 1 herein as recorded and observed by the Deputy Registrar of Co- operative Societies, K/East Ward, Mumbai. The issues regarding genuineness of original nomination form allegedly signed by late Mr. Nandkishore Pande and his death certificate, on the basis of which Mr.Gulabchand Sarda was admitted as Nitin 21 / 61 CA-944-2018-3.doc member, are sub judice in the criminal proceedings and the Additional Chief Metropolitan Magistrate, 44th Court has framed Charge against Applicant No.1 ; the Deputy Registrar has not decided the issue concerning the ownership or inheritance ; the Deputy Registrar has decided to issue permission to make legal representation on behalf of the estate of the deceased member.

24. By an Order dated 5th October, 2015, the Divisional Joint Registrar dismissed the Revision Application and confirmed the order passed by the Deputy Registrar, Co-operative Societies, K/East Ward under Section 23 (2) of the Act dated 21st May, 2015. In the said Order, the aforesaid facts pertaining to Plot No. 49 are once again set out. The submissions of the Applicant qua the nomination of late Gulabchand Sarda and another being forged illegally and the criminal court having framed charge against Respondent No.1 are also set out. The Divisional Joint Registrar has thereafter observed that it is settled law that the nominee has no legal right in the property and he has to act as a trustee for the benefit of the legal heirs of the deceased member ; since there is no nomination by Nandkishore Pande and even otherwise no nominee member has survived, the property of late Mr. Nandkishore Ghasiram Pande and late Bapulal Jhawar remained unrepresented ; for the protection of the interest of the estate of the two deceased joint members, the Applicant herein has agreed and undertaken that he and Ramesh Bapulal Jhawar (Applicant therein) are ready and willing to furnish all necessary undertakings and indemnity and shall hold the share in the plot for the benefit of all the heirs of late Nitin 22 / 61 CA-944-2018-3.doc Nandkishore Ghasiram Pande and late Bapulal Jhawar. Thus, the Applicant herein is eligible for obtaining the membership of the Respondent Society ; and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order.

25. The Order passed by the Deputy Registrar dated 21st May, 2015 rejecting the Application of the Respondents herein, seeking direction against the Society to accept them as members in respect of the share of Shri Gulabchand Sarda in Plot No. 49, pursuant to the nomination executed in their favour, and the Order of the Joint Divisional Registrar dated 5th October, 2015 confirming the Order of Rejection dated 21st May, 2015 passed by the Deputy Registrar, were impugned by the Respondents herein in Writ Petition No. 1455 of 2016 filed before this Court on 30th October, 2015. The Applicant herein is joined as party Respondent No.4 to the said Writ Petition. The Respondents herein (Petitioners therein) have in the Writ Petition only set out the facts pertaining to their Application seeking membership of the Society pursuant to the nomination of Shri Gulabchand Sarda in their favour and rejection of the same by the Society and the facts pertaining to the Applicant herein having applied for membership and rejected by the Society. In addition thereto, the Respondents herein have in the Writ Petition also set out the observations/findings of the authorities, that is the Deputy Registrar and the Divisional Joint Registrar. The Respondents herein have along with the Writ Petition submitted the points/issues which they are desirous of urging before the Writ Court, and the same are reproduced hereunder :

Nitin 23 / 61 CA-944-2018-3.doc "1. Whether the Deputy Registrar CHS has the powers to adjudicate the heirship rights and ownership rights of the property in proceedings for membership u/s. 23(2) ?

2. Whether orders passed by the Deputy Registrar are illegal and bad-in-law ?

3. The Deputy Registrar and the Divisional Joint Registrar have misconstrued the powers vested in Deputy Registrar under Section 23(2) of the MCS Act, 1960 ?"

26. Though the Respondents herein are desirous of impugning the orders passed by the Deputy Registrar and Joint Divisional Registrar, Co-operative Societies only on the abovestated limited legal issues/points, it is pertinent to note that the Writ Petitioners (Respondents herein) in the Writ Petition have, along with the Writ Petition placed before this Court a compilation of documents containing a copy of Appeal No. 21 of 2013 dated 10th December, 2013, filed by the Respondents herein before the Deputy Registrar Co-operative Societies under Section 23(2) of Maharashtra Co-operative Societies Act, 1960 against Shree Rajasthan Co-operative Housing Society Limited, along with annexures ; a copy of the say/reply dated 10th March, 2014 filed by the Society in Appeal No. 21 of 2013 ; a copy of the Rejoinder dated 24th March, 2014 filed by the Respondents herein in response to the say filed by the Society ; a copy of Application No.1 of 2009 dated 20th March, 2009 filed before the Deputy Registrar, Cooperative Societies, K/East Ward, Mumbai under Section 25A of the Act ; a copy of the intervention application dated 24th March, 2014 filed by Nitin 24 / 61 CA-944-2018-3.doc the Applicant herein seeking permission to intervene in Appeal No. 21 of 2013 filed by the Respondents herein under Section 23(2) of the Act ; a copy of the common order dated 21st May, 2015 passed by the Deputy Registrar Co-operative Societies, in Appeal No. 21 of 2013 filed by the Respondents herein along with intervention Application filed by the Applicant

along with Mr. Ramesh Bapulal Jhawar ; a copy of the Revision Application No. 184 of 2015 filed by the Respondents herein before the Joint Divisional Registrar, Cooperative Societies (Appeals) at Mumbai ; a copy of the written submissions dated 30th July, 2015 filed by the Applicant herein opposing the admission of the Revision Application and grant of any interim reliefs ; a copy of the Rejoinder filed by the Writ Petitioner (Respondent No.2 herein) dated 17th August, 2015 to the reply of the Applicant ; a copy of the final written submissions dated 3rd September, 2015 filed by the Respondents herein in Revision Application No. 184 of 2015 ; a copy of the Order dated 5th October, 2015 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division in Revision Application No. 184 of 2015.

Thus every detail of the said property, right since the formation of the Society in the year 1946 and every allegation/submission of the Applicant qua the fraud allegedly perpetrated by Shri Gulabchand Sarda, Jagdishchandra Pande and Respondent No. 1 herein, including particulars of the criminal and civil proceedings and orders passed therein is available in the above proceedings/submissions/orders and the same are placed before the Court along with the Writ Petition by the Respondents themselves.

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27. It is only after the above Writ Petition was filed on 18th December, 2015 by the Respondents herein (Petitioners therein), that on 9 th 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.

28. On 6th February, 2018, the Applicant, who is Respondent No. 1 in Writ Petition No. 1455 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.1455 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. 1455 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 Nitin 26 / 61 CA-944-2018-3.doc 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.

29. 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 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, 3 174 (2010) Delhi Law Times 214 Nitin 27 / 61 CA-944-2018-3.doc 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 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 4 2016 (155) DRJ 259 Nitin 28 / 61 CA-944-2018-3.doc 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".

(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 5 1999 Cri.L.J. 4743 6 (1995) 4 JT (SC) 483 : (AIR 1995) SC 795) 7 (2008) 12 SCC 481 Nitin 29 / 61 CA-944-2018-3.doc 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 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 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

8 2002 Cri.L.J. 548 9 2018 (1) Bom.C.R. 769 Nitin 31 / 61 CA-944-2018-3.doc 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 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* Nitin 32 / 61 CA-944-2018-3.doc 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.

30. 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 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;
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(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.

31. Clause (b) of sub-Section (1) of Section 195 of the Cr.P.C. 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

(c).....

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32. When I was going through the reliefs sought by the Applicant in Civil Application No. 482 of 2018 in Writ Petition No. 721 of 2016, which prayer is also repeated in the above Civil Application, 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.P.C. 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 Nitin 35 / 61 CA-944-2018-3.doc the submission of Mr. Ojha, that the Respondent cannot be heard at this stage is not accepted.

33. I have perused the above Application as well as Writ Petition No. 1455 of 2016 (filed on 30th October, 2015) along with the compilation of documents submitted therewith.

34. From the above facts, it is clear i. that pursuant to the complaint filed by the Applicant, an FIR was filed vide CR No. 226 of 2009 punishable under Sections 465, 467, 468, 471, 420, 120 (B) and 34 of IPC against Jagdishchandra Pande, 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 Sharda (Accused Nos. 1, 2 and 3). Investigations have been stayed by this Court against other 16 accused who are the office-bearers of the Society. Charge-sheet was filed and issued by the EOW to Accused Nos. 1, 2 and 3. However, during pendency of 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, and thus the Trial Court has framed charges only against Respondent No. 1 herein. The charges impleaded by the EOW in the charge-sheet need to be proved in a court of competent jurisdiction.

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However, the trial is still pending.

ii. that 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 names of Jagdishchandra Pande and Gulabchand Sarda from the records of the Society. The Deputy Director allowed the said Application No. 1 of 2009, and the Revision Application filed by the Society as well as Gulabchand Sarda also stood rejected. However, by an Order dated 1 st July, 2009 passed by the learned 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 16 th 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 has got his name entered in the Membership Register by playing fraud on the Respondent Society, the Respondent should have availed of remedies open to Respondent No. 1 in law. 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. The Applicant therefore, filed a Nitin 37 / 61 CA-944-2018-3.doc dispute being Dispute No. CC/IV of 2014 before the Co-operative Court No. IV, Ballard Estate, Mumbai, on 25th April, 2014, against the Society and the heirs of Jagdishchandra Pande and Gulabchand Sarda (Respondents herein) 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 null and void and it be further declared that the Resolution of the Society dated 9th January, 1994, passed by 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. The said dispute is pending till date. iii. that thereafter 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 the subject property and therefore the Respondent Society be directed to remove the names of Jagdishchandra Pande and Gulabchand Sarda from the members of the subject property i.e. Plot No. 49. By his order dated 21st May, 2015 the Deputy Registrar, Co-operative Societies disposed off the said Application by directing the Society to remove the names of late Jagdishchandra Pande and Gulabchand Sarda within a period of two weeks. The Revision Application filed by the Respondents herein being No. 184 of 2015 was dismissed by the Divisional Joint Registrar, Co-operative Societies by his order dated Nitin 38 / 61 CA-944-2018-3.doc 5th October, 2015. Being aggrieved by the said order, the heirs of Jagdishchandra Pande have filed Writ Petition No. 721 of 2016 before this Court impugning the said orders. The Writ Petition is pending before this Court and in the said Writ Petition too, the Applicant has filed Civil Application No. 482 of 2018 under Sections 340 read with Section 195 of Cr.P.C. against the heirs of Jagdishchandra Pande on the ground that they have made false statements in the Writ Petition knowing the same to be false and have also suppressed the true facts with the intention to mislead the Court and obtain favourable orders. The said Civil Application being No. 482 of 2018 is dismissed by my Order dated 22nd December, 2018.

iv. that in the meantime, the father of Respondent No.1-Gulabchand Sarda, and father-in-law of Respondent No. 2 passed away on 17 th December, 2012 at Mumbai. Prior to his death, he had filled up the nomination form and submitted the same to the Society, wherein he had nominated the Respondents herein (his son and daughter-in-law) in respect of the said plot No. 49. On 16 th July, 2014, the Respondents sought transfer of membership as well as shares in their favour. The Society called upon the Respondents herein to pay the legal charges amounting to Rs. 89,588/- which the Society had to incur in view of the litigation pertaining to the said plot No. 49, which was paid by the Respondents herein. Thereafter the Society by its letter dated 12th August, 2013 rejected the application of the Respondents seeking transfer on 3rd October, 2013, on the ground that the matter is sub judice. The Respondents herein filed an Appeal/Petition on 10 th December, 2013, under Section Nitin 39 / 61 CA-944-2018-3.doc 23 (2) of the Act before the Deputy Registrar, Co-operative Societies, K/East Ward, Mumbai, seeking necessary direction against the Society to transmit the

share certificates in the name of the Respondents herein.

v. that the Society filed its detailed reply dated 10 th March, 2014, to the said Appeal/Petition filed by the Respondents herein under Section 23 (2) of the Act and as set out in paragraph 15 hereinabove recorded in detail what according to them transpired in regard to the said property from the date of the formation of the Society till the date of filing of the said reply. The Society has in its reply inter alia set out the facts pertaining to the criminal complaint filed by the Applicant against Jagdishchandra Pande, Gulabchand Sarda and, Vijaykumar Sarda and the correspondence received by the Society from Gulabchand Sarda, Jagdishchandra Pande, the Applicant herein and the mother of the Applicant herein, and the claims as well as the allegations made therein. The Society has also submitted in its reply that though allegations and counter allegations are made by the Pande Group and the Sarda Group, none of them have thought it fit and appropriate to settle the title disputes before a court of civil jurisdiction.

vi. that though the Society gave a very detailed reply, it has not lost sight of the fact that the issues which inter alia arise for consideration before the Deputy Registrar Co-operative Societies, is whether a nominee member could further nominate anyone else to succeed and to become a member after the death of such nominee member, and therefore even assuming that Gulabchand Sarda was a Member Nitin 40 / 61 CA-944-2018-3.doc and further assuming that the Society has accepted the nomination, the question remained whether such a nominee member could further nominate a person of his or her choice.

vii. that the Respondents herein filed their rejoinder to the said reply of the Society dated 24th March, 2014, wherein they inter alia pointed out that it is not the duty of the Respondent Society to decide as to who are the successors to the property i.e. who has inherited the property after the death of the original member and that once the name of the Member is registered in the Membership Register of the Society, the Society should not be concerned whether the member is holding the membership as a trustee or as an owner.

viii. that the Applicant herein also filed an Application to be joined as an intervenor in the Petition filed by the Respondents herein, impugning the decision of the Society rejecting their application to be taken on record as members of Plot No. 49.

ix. that as stated in detail in paragraph 17 hereinabove, the Applicant in his final written submissions dated 24th March, 2014, has in detail alleged how the said plot was acquired and how, according to him, Jagdishchandra Pande and Gulabchand Sarda tampered with the death certificate of Nandkishore Pande, fabricated the nomination and fraudulently transferred the said plot in their names, and after discovering the said fraud the steps that he took, including registering FIR No. 226 of 2009 against the accused and the 16 office-bearers Nitin 41 / 61 CA-944-2018-3.doc x. that the Applicant had also applied to the Society to transfer the said property in his favour and transmit the share certificate in his name, which Application was rejected by the Society. Therefore, the Applicant too on 14 th June, 2014, filed an Appeal/Petition before the Deputy Registrar, Co-operative Societies, K/East Ward, under Section 23 (2) of the Act, seeking necessary directions against the Society to transmit the share certificate in his name.

xi. that the Deputy Registrar , Co-operative Societies, K/East Ward, by his common order dated 21st May, 2015, disposed of the Appeals filed by the Applicant as well as the Respondents herein. The Deputy Registrar has in his Order dated 21st May, 2015, set out in detail all the submissions/allegations made by the Applicant herein in his Intervention Application including the allegation that Jagdishchandra Pande and Gulabchand Sarda had colluded with each other and with some of the office-bearers of the Respondent Society and have forged and fabricated the nomination papers and also tampered/forged the certified true copy of the death certificate issued by the Municipal Corporation. The Deputy Registrar has also recorded in his order that the issue as regards heirship and inheritance of the said plot is not in question. The Deputy Registrar has thereafter held that the said nomination cannot be considered as legal and valid. The Deputy Registrar, after recording the facts pertaining to the criminal complaint, being FIR No. 226 of 2009, and the fact that the charges have been framed against Respondent No.1, has recorded that the issue of invalid nomination by Nandkishore Bapulal and admission of Jagdishchandra Nitin 42 / 61 CA-944-2018-3.doc Pande and Gulabchand Sarda as nominee members, has not much significance at this point of time, in view of the fact that both the said nominee members have passed away. The Deputy Registrar has also observed that it is now well settled that the nominee has no legal right in the property and he has to act as the trustee for the benefit of the legal heirs of the deceased member and that a nominee cannot make further nomination ; the nomination made by Gulabchand Sarda in favour of Respondents herein is therefore not valid and legal and as such the Respondent Society is not under any obligation to admit them as members. The Deputy Registrar proceeded to hold that the Applicant is undisputedly one of the sons and legal heir of Nandkishore Ghasiram Pande and since there is no nomination by Nandkishore Ghasiram Pande, and even otherwise no nominee member has survived, the estate of late Nandkishore Ghasiram Pande and late Shri Bapulal Jhawar has remained unrepresented. The Deputy Registrar therefore allowed the Petition filed by the Applicant, with a direction to admit him as member on his executing an undertaking to the effect that he will hold the said property and shares in respect thereof for the benefit of the other legal heirs of late Nandkishore Ghasiram Pande and Bapulal Jhawar.

xii. that the Order passed by the Deputy Registrar dated 21 st May, 2015, is challenged by the Respondents herein by filing Revision Application No. 184 of 2015 on 4th June, 2015, before the Joint Divisional Registrar, Co-operative Societies. Once again, the facts as well as the contentions raised and recorded hereinabove are Nitin 43 / 61 CA-944-2018-3.doc repeated by the Respondents herein in the said Revision Application. An application for stay of the order passed by the Deputy Registrar was also filed before the Revisional Authority.

xiii. that the Applicant has filed his say/written submission dated 30 th July, 2015 to the above Revision Application. In the said say/written submission as set out in paragraph 23 herein above, the Applicant has given the entire history of the matter right since 1946 when the said Rajasthan Co-operative Housing Society was registered, the reasons why the nomination form is bogus and the death certificate is tampered with/manipulated, the manner in which the share transfer form was submitted and the Resolution dated 9th January, 1994 was passed by the Society ; the steps that the Applicant took upon him discovering the alleged fraud including the criminal complaint filed by him. The Applicant has himself in his written submission submitted that the issue regarding genuineness of the original nomination form allegedly signed by late Jagdishchandra Pande and the

death certificate of the original Member, on the basis of which the nomination of the Applicant was admitted, are sub judice in the criminal proceedings and the Deputy Registrar (whose decision is challenged by the Respondents herein in the above Writ Petition No. 1455 of 2016) has not decided the issue concerning the ownership or inheritance but has decided the issue pertaining to the validity and legality of the nomination of the deceased member and the issue qua permitting the legal representative to make representation on behalf of the estate of the deceased member.

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xiv. that by an Order dated 5th October, 2015, the Divisional Joint Registrar

dismissed the Revision Application and confirmed the Order passed by the Deputy Registrar, Co-operative Societies, K/East Ward under Section 23 (2) of the Act dated 21st May, 2015. The Divisional Joint Registrar has observed that it is settled law that the nominee has no legal right in the property and he has to act as a trustee for the benefit of the legal heirs of the deceased member. Since there is no nomination by Nandkishore Pande and even otherwise no nominee member has survived, the property of late Mr. Nandkishore Ghasiram Pande and late Bapulal Jhawar remained unrepresented. Therefore, for the protection of the interest of the estate of the two deceased joint members, the Applicant is eligible for obtaining the membership of the Respondent Society and, therefore, no interference is called for qua the order passed by the Deputy Registrar dated 21st May, 2015.

xv. that the crux of the decision of the impugned Order dated 21 st May, 2015, passed by the Deputy Registrar, Co-operative Societies and the Divisional Joint Registrar, whilst declining to interfere with the order of the Deputy Registrar, is that it is settled law that the nominee has no legal right in the property and he has to act as a Trustee for the benefit of the legal heirs of the deceased member ; since there is no nomination by Nandkishore Pande and even if there is such nomination, no nominee member has survived, and therefore the property of late Nandkishore Pande and late Bapulal Jhawar have remained unrepresented ; the Society is therefore correct in rejecting the Application of the Respondents to accept them as members on the Nitin 45 / 61 CA-944-2018-3.doc basis of the nomination form of Nandkishore Ghasiram Pande and in the interest of the estate of the two deceased joint members, the Applicant herein is eligible for obtaining the membership of the Respondent Society, only to hold the share in the plot for the benefit of all the heirs of late Nandkishore Ghasiram Pande and late Bapulal Jhawar.

xvi. that the Applicant himself has in his written submissions dated 21 st May, 2015 filed before the Divisional Joint Registrar, Co-operative Societies submitted that the Deputy Registrar has decided the validity and legality of the nomination of the deceased member and not the issue concerning the ownership or inheritance. xvii. that the aforesaid Order passed by the Deputy Registrar dated 21 st May, 2015 and the order dated 5th October, 2015 passed by the Divisional Joint Registrar, are impugned by the Writ Petitioners (Respondents herein) on very limited points/ issues, which they are desirous of urging. The said points/issues are once again reproduced hereunder :

"1. Whether the Deputy Registrar CHS has the powers to adjudicate the heirship rights and ownership rights of the property in proceedings for membership u/s. 23(2) ?

2. Whether orders passed by the Deputy Registrar are illegal and bad-in-law ?

3. The Deputy Registrar and the Divisional Joint Registrar have misconstrued the powers vested in Deputy Registrar under Section 23(2) of the MCS Act, 1960 ?"

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xviii. that in view thereof, the allegations pertaining to fabrication of

documents and/or fraudulent transfer of the said property etc. are not relevant for deciding the issues raised in the Writ Petition.

xix. that in any event, as stated above, the Respondents herein have along with the Writ Petition submitted a compilation of documents which includes a copy of Appeal No. 21 of 2013 dated 10th December, 2013, filed by the Respondents herein before the Deputy Registrar Co-operative Societies under Section 23(2) of Maharashtra Co-operative Societies Act, 1960 against Shree Rajasthan Co-operative Housing Society Limited, along with annexures ; a copy of the say/reply dated 10th March, 2014 filed by the Society in Appeal No. 21 of 2013 ; a copy of the Rejoinder dated 24th March, 2014 filed by the Respondents herein in response to the say filed by the Society ; a copy of Application No.1 of 2009 dated 20th March, 2009 filed before the Deputy Registrar, Cooperative Societies, K/East Ward, Mumbai under Section 25A of the Act ; a copy of the intervention application dated 24th March, 2014 filed by the Applicant herein seeking permission to intervene in Appeal No. 21 of 2013 filed by the Respondents herein under Section 23(2) of the Act ; a copy of the common order dated 21st May, 2015 passed by the Deputy Registrar Co-operative Societies, in Appeal No. 21 of 2013 filed by the Respondents herein along with intervention Application filed by the Applicant along with Mr. Ramesh Bapulal Jhawar ; a copy of the Revision Application No. 184 of 2015 filed by the Respondents herein before the Joint Divisional Registrar, Cooperative Societies (Appeals) at Mumbai ; a copy of the Nitin 47 / 61 CA-944-2018-3.doc written submissions dated 30th July, 2015 filed by the Applicant herein opposing the admission of the Revision Application and grant of any interim reliefs ; a copy of the Rejoinder filed by the Writ Petitioner (Respondent No.2 herein) dated 17th August, 2015 to the reply of the Applicant ; a copy of the final written submissions dated 3rd September, 2015 filed by the Respondents herein in Revision Application No. 184 of 2015 ; a copy of the Order dated 5th October, 2015 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division in Revision Application No. 184 of 2015.

xx. The Applicant has heavily relied on the contents of 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 other accused, who are the officer bearers of the Society. However, admittedly the EOW has filed the said Criminal Application much after Writ Petition No. 1455 of 2016 was filed by the Respondents herein.

xxi. that thus every detail of the said property right since the formation of the Society in the year 1946 and every allegation/submission of the Applicant - Satyanarayan Pande qua the fraud allegedly perpetrated by Shri Gulabchand Sarda, Jagdishchandra Pande and Respondent No. 1 herein, including particulars of the criminal and civil proceedings and orders passed therein, is available in the above proceedings/submissions/orders and the same are placed before the Court along with Writ Petition by the Respondents themselves.

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xxii. that therefore the Respondents herein, who are Petitioners in Writ

Petition No. 1455 of 2016, have not made any false statements and/or any misrepresentation, nor have they suppressed any facts from this Court, but have themselves placed all the facts/allegations/submissions made by the Applicant, before the Writ Court.

35. I now proceed to deal with the allegations of alleged false submissions as set out by the Applicant in the above Application.

36. It is alleged by the Applicant that in the synopsis (Sr. No.2) of the Writ Petition the Respondents herein (Petitioners therein) have made a false submission that, "in pursuance to a nomination made of their names and accepted by the Society in the year 1973...."

36.1 In support of his above allegation, the Applicant has in the Column captioned "True Facts" stated that it is absolutely wrong that the Society never received any nomination nor accepted any nomination in 1973 ; in the Society records there is no entry of receipt of nomination as well as it was never put up before the Managing Committee Meeting of the Society ; the same was never entered in the Nomination Register of the Society ; the Society does not have any proof to show that the nomination was received in 1973 ; hence it is wrong to say that the nomination was accepted by the Society in 1973.

36.2 The Applicant has picked up only a part of the sentence from Sr. No. 2 of the Synopsis. In any event all the facts/allegations made/submitted by the Nitin 49 / 61 CA-944-2018-3.doc Applicant, as well as the Society pertaining to nomination are placed before this Court by the Writ Petitioners (Respondents herein), by submitting a compilation of documents along with the Writ Petition. In

view thereof, there is no suppression on the part of the Respondents, and therefore the question of the Respondents having made false or incorrect statements in order to mislead the Court or for obtaining favourable orders does not arise. 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 v. State 11, wherein the learned Single Judge whilst considering at length the issue pertaining to false averments in pleadings, has succinctly stated that making false averment in pleadings is an attempt at inviting the Court into passing a wrong Judgment and that is why it must be treated as an offence. In the instant case, the Petitioners have placed every fact/allegation qua the nominations before the Court. The impugned orders also deal with the submissions/allegations qua the nominations. Therefore, it cannot be said that the Writ Petitioners (Respondents herein) have made a false averment with the intention to invite the Court into passing a wrong judgment.

37. It is next alleged by the Applicant that in paragraph 1 of the Writ Petition the Respondents herein (Petitioners therein) have made a false submission that, ".....the Petitioners are the nominees claiming under a valid nomination accepted by the Respondent No. 3 from its earlier member Mr. G.R. Sarda"

11 174 (2010) Delhi Law Times 214 Nitin 50 / 61 CA-944-2018-3.doc 37.1 In support of his above allegation, the Applicant has in the Column captioned "True Facts" stated that the allegations are false as the Respondents suppressed the material fact that neither Jagdishchandra Pande nor Gulabchand Sarda were owners of Plot No. 49 ; Nandkishore Ghasiram Pande and Bapulal Jhawar were joint owners and the subject plot was registered in the joint name of Nandkishore Bapulal ; the death certificate of Nandkishore Ghasiram Pande was tampered by Gulabchand Sarda , father of Respondent No. 1 and Jagdishchandra Pande ; there is no living person by the name of Nandkishore ; based upon the tampered death certificates, Jagdishchandra Pande and Gulabchand Sarda became nominee members of the Society ; that Gulabchand Sarda himself was a nominee of Nandkishore Bapulal, and as per the settled principle of law, a nominee is just a caretaker till the heirs of original members comes on the record of the Society and, therefore, Gulabchand Sarda was not entitled to further nominate his heirs. 37.2 According to the Applicant himself, the issue of ownership of the plot and fabrication of documents is the subject matter of the criminal complaint and is not decided by the impugned orders. By the impugned order, it is only the validity/legality of the nomination that is decided. By the impugned orders, it is held that a nominee has no rights upon his death and a nominee cannot nominate. The issue in the Writ Petition is therefore a legal issue and it is certainly not necessary to set out the facts pertaining to the ownership of the plot and the documents which are allegedly fabricated. In any event, none of the facts/documents have been suppressed Nitin 51 / 61 CA-944-2018-3.doc by the Writ Petitioners (Respondents herein) since all the facts/allegations made by the Applicant qua the fabrication of documents, the nominations, transfer of the said property, the criminal and civil proceedings etc. are placed before the Writ Court by the Writ Petitioners (Respondents herein) themselves by way of a compilation of documents. Again, the allegations/submissions pertaining to fabricated documents

and the nominations are also found recorded in the orders impugned in the Writ Petition. The allegation therefore of the Respondents 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.

38. It is alleged by the Applicant that in paragraph 2 of the Writ Petition the Respondents herein (Petitioners therein) have made a false submission that, "..... the Petitioners as nominees made an application for the share of the Society and its membership."

38.1 In support of his above allegations, the Applicant has in the Column captioned, "True Facts" stated that the said statement is totally false as the Respondents were fully aware that Gulabchand Sarda had nominated the Respondents, though he himself was a nominee member who cannot further nominate ; Gulabchand Sarda was admitted as a nominee of Nandkishore Bapulal with the help of tampered death certificate and false nomination ; an FIR being No. 226 of 2009 was filed against Respondent No. 1 and his father for fraud, forgery and cheating; charge sheet has been filed by the Police and charges have also been framed by the Nitin 52 / 61 CA-944-2018-3.doc Magistrate ; the said nomination is also challenged before the Co-operative Court ; the Petition filed before the Court by the Respondents claiming to be nominees brings out the criminal act of the Respondents.

38.2 That the Petitioners (Respondents herein) as nominees, made an application for the shares of the Society and its membership is a fact. The issue pertaining to nomination is discussed/dealt with by the authorities in their orders which are impugned before the Writ Court by the Writ Petitioners (Respondents herein). In fact, all that is alleged by the Applicant and set out in Clause 38.1 above, is set out in the impugned order and also in the documents a compilation of which is already placed before the Writ Court by the Writ Petitioners (Respondents herein) themselves. The Applicant instead of filing his reply in the Writ Petition is attempting to answer/deal with the averments made in the Writ Petition by way of the above Civil Application under Section 340 of the Cr.P.C., which cannot be allowed. It therefore cannot be said that the Respondents have made false statements/averments in their Writ Petition in an attempt to invite the Court to pass a wrong judgment, and therefore it must be treated as an offence. It also cannot be said that the Respondents have made a false or incorrect statement on oath in order to mislead the Court and obtain favourable orders.

39. It is next alleged by the Applicant that in paragraph 3 of the Writ Petition, the Respondents herein (Petitioners therein) have made a false submission that, ".....the Respondent was asked for payment of monies as reimbursement of legal Nitin 53 / 61 CA-944-2018-3.doc costs incurred by them in some cases involving the Petitioners' father (who was a party to some litigation filed by Respondent No.4)"

39.1 In support of his above allegation, the Applicant has in the Column captioned 'True Facts' stated that the father of Petitioner No. 1 (Respondent No. 1 herein) Gulabchand Sarda became a nominee member based on fabricated death certificate and false nomination, for which he has filed FIR against him and his father and the

Managing Committee of the Society ; the Society approached the Court for anticipatory bail and the expenses incurred for paying their individual Advocates has been charged to the plot holders ; thus the Respondents have suppressed this material fact from the Court that the legal charges pertaining to the criminal case in which Respondent No. 1 himself, and his father were accused were charged to the plot holders.

39.2 The points/issues which the Writ Petitioners are desirous of urging in the Writ Petition are the limited and are set out in paragraph 25 hereinabove. The statement quoted above is not at all relevant for deciding the correctness of the impugned orders, wherein it is inter alia held that the nomination form in favour of Jagdishchandra Pande and Gulabchand Sarda was not valid or legal, and even otherwise upon the death of a nominee he loses rights over the properties as regards which he was appointed as a nominee ; and that a nominee being a trustee of the property cannot further nominate. In any event, the Respondents have, as set out hereinabove, tendered along with the Writ Petition a compilation of documents Nitin 54 / 61 CA-944-2018-3.doc wherein details of the criminal as well as the civil proceedings, including the allegations pertaining to forgery and tampering of documents made by the Applicant/Society, have been placed before the Court. The question therefore of any false statement being made, or there being suppression of facts by the Respondents with the intention to mislead the Court or obtain favourable orders, does not arise.

40. It is next alleged by the Applicant that in paragraph 4 of the Writ Petition the Respondents herein (Petitioners therein) have made a false submission that, ".....It is to be pointed out that no matter involving the Petitioners and the Society was pending to be called sub judice".

40.1 In support of his above allegation the Applicant has in the Column captioned "True Facts", once again repeated all the allegations qua him having learnt about the alleged fraud in the year 2008 and tampering of death certificate, nomination form etc., and that he filed a criminal complaint and that the Deputy Registrar removed the name of Jagdishchandra Pande and Gulabchand Sarda and entered his name as the legal heir, and therefore the statement made by the Respondents is absolutely wrong.

40.2 It is a fact that the above statement is made by the Respondents in their narration of facts in the Writ Petition, that the Petitioners (Respondents herein) applied to the Society as nominees of Gulabchand Sarda for the shares of the Society and its membership. The Petitioners (Respondents herein) have filed a compilation of documents along with the Writ Petition. The said documents inter alia discloses in Nitin 55 / 61 CA-944-2018-3.doc detail the stand of the Applicant as to why they cannot claim to be nominees of Gulabchand Sarda. The Deputy Registrar and the Divisional Joint Registrar have not accepted the stand of the Respondents and have rejected the relief sought by them, on the grounds set out therein. The said Orders are impugned in the Writ Petition filed by the Respondents herein before the Writ Court. The Applicant instead of filing his reply to the Writ

Petition and pursuing the Petition, is picking up certain statements from the Petition and is denying/disputing the same and alleging that the Respondents herein have made false submissions in the Writ Petition and have suppressed facts, though the documents submitted along with the Writ Petition contains all that the Applicant has stated/alleged in this Civil Application. It therefore cannot be said that the Respondents have made false statements/averments in their Writ Petition in an attempt to invite the Court to pass a wrong judgment, and therefore it must be treated as an offence. It therefore also cannot be said that false or incorrect statement/s on oath are made by the Respondents herein, in order to mislead the Court and obtain favourable orders.

41. It is next alleged by the Applicant that in paragraph 5 of the Writ Petition the Respondents (Petitioners therein) herein have made a false submission that, "... Petitioners opposed the intervention as absurd and untenable as neither Respondent 4 or 5 were nominated by the past members to receive the shares and partnership of the Society by nomination".

41.1 In support of his above allegation, the Applicant has in the Column

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captioned 'True Facts' stated that Gulabchand Sarda himself got the membership of the Society by way of a nomination; though Gulabchand Sarda was not the legal heir of the nominator Nandkishore Ghasiram Pande, he became a nominee member with the help of tampered death certificate; though the Respondents are fully aware of this fact, they are raising this type of irrelevant points just to mislead the Hon'ble Court. 41.2 It is an admitted fact that the Respondents herein opposed the intervention application filed by Respondent Nos. 4 and 5 on the ground that they were not nominated by Gulabchand Sarda and they were not his legal heirs. What is stated by the Writ Petitioner qua the intervention, is in the form of narration in the Writ Petition. In any event, the "true facts" as set out by the Applicant are already placed before the Writ Court by the Writ Petitioners by way of compilation of documents filed along with the Writ Petition. The question therefore of misleading the Court does not arise.

42. It is next alleged by the Applicant that in the Writ Petition the Respondents herein (Petitioners therein) have made a false submission that the Applicant has filed separate appeal under Section 23 (2) of the Act against the Society for grounds of refusal of membership which he had applied for without any locus standi."

42.1 In support of his above allegation, the Applicant has in the Column captioned 'True Facts' stated that the Respondents are aware that the Applicant is the heir of the original co-owner-late Nandkishore Ghasiram Pande and therefore the Nitin 57 / 61 CA-944-2018-3.doc Applicant has locus to claim rights in property of his deceased father. Only to misguide the Authority, the Respondents claimed that they have no locus standi. 42.2 The Respondents have stated in

paragraph 6 of the Writ Petition that, "Respondent No. 4 had filed a separate Appeal under Section 23 (2) of Maharashtra Co-operative Societies Act, 1960 against the Society for grounds of refusal of membership which he had applied for without any locus standi and the Society rejected his claim for want of locus to claim membership. Yet he sought intervention in Appeal unconnected in law to his contentions but the Respondent No. 2 allowed it."

42.3. Apart from the fact that this submission is in the form of a legal submission viz., that the Applicant has no locus to apply to the Society to accept him as a Member, the authorities have, after considering the law, directed the Society to accept the Applicant as a Member, who would take care of the property and protect the interest of all the heirs of Gulabchand Sarda. The orders passed by the Authorities are impugned by the Respondents herein before the Writ Court. The said orders speak for themselves and the Writ Court will decide the issues raised by the Applicant as well as the Writ Petitioners (Respondents herein) on merits. The question therefore, of misguiding the authority or the Writ Court does not arise.

43. It is next alleged by the Applicant that in paragraph 7 of the Writ Petition the Respondents herein (Petitioners therein) have made a false submission that "the act of allowing intervention by Respondents 4 and 5 in the Appeal Nitin 58 / 61 CA-944-2018-3.doc proceedings filed by the Petitioners in view of a clear cut nomination in their names was in itself unwarranted and defective and created mischief." 43.1 In support of his above allegation, the Applicant has in the column captioned 'True Facts' stated that according to the Applicant, the name of Gulabchand Sarda was entered in the Society records based on tampered death certificate and other documents, as nominee members, and thus he being a nominee member was not entitled to make a further nomination. The claim of the Respondents that there is "a clear cut nomination in their names", is totally wrong. In fact, the Respondents nomination may be called defective, created by mischief, and by committing forgery. 43.2 The Writ Petition is filed by the Respondents (original Petitioners) impugning the orders passed by the Deputy Registrar as well as the Divisional Joint Registrar of the Co-operative Societies, by which it is clear that the authorities have allowed intervention of Respondent Nos. 4 and 5 in the Appeal proceedings filed by the Writ Petitioners (Respondents herein). The Joint Deputy Registrar has along with the Appeal filed by the Respondents herein, also heard the Appeal filed by the Applicant, and the Respondents opposition thereto. The statement in question is only a submission made by the Respondents in the Writ Petition. The allegations made by the Applicant qua the tampered death certificate and other documents, and the submissions qua the nomination of Gulabchand Sarda and the subsequent nominations made by him in favour of the Respondents, are as stated hereinabove, all brought on record/placed before the Court by the Respondents herein. The Nitin 59 / 61 CA-944-2018-3.doc nomination by Shri Gulabchand Sarda in favour of the Respondents is already rejected by the authorities and the same is impugned in the Writ Petition. In view thereof, the question of the Respondents suppressing any facts from the Court or making a false statement or misguiding the Court to obtain favourable orders does not arise.

44. It is next alleged by the Applicant that in paragraph 7 of the Writ Petition the Respondents herein (Petitioners therein) have made an incorrect submission that "the Respondent No. 2 also clubbed the independent Appeal filed by the Respondent No. 4 individually along with the Appeal of the Petitioners". 44.1 In support of his above allegation, the Applicant has in column captioned 'True

Facts' sought to explain why clubbing was the only solution. 44.2 The Applicant has taken great pains to allege that the Respondents have made false statements in the Writ Petition. Instead of filing a reply to the Writ Petition dealing with the submissions, he has tried to answer the submissions made by the Respondents in the Writ Petition in the present application filed under Section 340 of the Cr.P.C. No case is made out by the Applicant that the Respondents have made any false statement on oath, or have suppressed any fact in the matter.

45. The Applicant has also alleged that in paragraphs 8, 11 and 13 of the Writ Petition, the Respondents herein (Petitioners therein) have made incorrect submissions as follows :

"8. The Section is thoroughly misread and illegally applied....."

11. decided the issues of ownership of the plot, partnership, shares, allegation of Nitin 60 / 61 CA-944-2018-3.doc perjury without any motive and evidence.... The order of the Respondent No. 1 in deciding issues of the property, heirship and shares which power and jurisdiction is not vested in him is rank illegal and at the same time failed to issue of ownership and entitlement in a cooperative set up which are within his jurisdiction".

13. ... receipt of clear cut case laws has been lost on them and has resulted to injustice to the Petitioner..... the orders are illegal, unjust, bad in law and perverse ." 45.1 In support of the above allegations, the Applicant has in the column captioned "True Facts" stated that the Sections are correctly decided by the authority; it is absolutely wrong to claim that authorities have decided the issues pertaining to partnership, shares, etc ; the authorities have decided only the issue of membership of the society which is under its jurisdiction; moreover there are several proof of evidence of perjury such as tampered death certificate, bogus nomination, false transfer form, bogus resolution, fraudulent intimation letter etc.; that the case laws cited by the Respondents are not applicable in cases of criminal conspiracy where documents are fraudulently prepared; that the matters are decided on true facts and merits and therefore cannot be called illegal, unjust, bad in law and perverse. 45.2 The Applicant has picked up portions of certain sentences from the paragraphs in the Writ Petition and has submitted that the statements are false. The impugned orders are before the Writ Court and they speak for themselves. All the documents containing the stand of the Applicant are also placed by the Writ Petitioners before the Writ Court by way of compilation of documents. The Writ Nitin 61 / 61 CA-944-2018-3.doc Petitioners have along with the Writ Petition, also set out the points which they seek to urge before the Writ Court. In view thereof, by no stretch of imagination it can be said that any false statements are made by the Respondents herein with the intention of suppressing facts or obtaining favourable orders from the Court.

46. 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. They have along with the Writ Petition placed before the Court all the proceedings, written submissions, orders, wherein 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.)