(2011) 06 BOM CK 0172

In the Bombay High Court

Case No : Family Court Appeal No''s. 131 and 148 of 2009

Anwar @ Arvind Ramkrishna Mudbhatkal — APPELLANT

Vs

Shehnaz Sani
 Shehnaz Sani Vs Dr. Anwar @ Arvind Ramkrishna Mudbhatkal — RESPONDENT

Date of Decision : 21-06-2011

Acts Referred:
- Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1
- Hindu Marriage Act, 1955 — Section 13(1)
- Maharashtra Co-operative Societies Act, 1960 — Section 2(19), 27(1)

Citation : (2012) 3 BomCR 318 : (2012) 1 MhLj 245

Hon'ble Judges : R.Y. Ganoo, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Neeta Karnik, for the Appellant;

Judgement

R.Y. Ganoo, J.—These two appeals are filed by the respective Appellants so as to challenge the judgment and decree dated 1st June, 2009 passed by the learned Judge of the Family Court No. 2, Mumbai, (hereinafter referred to as "Family Court"), in Petition No. B-153 of 2008. These two appeals can therefore be conveniently disposed of by a common judgement. Arvind Anwar @ Arvind Ramkrishna Mudbhatkal shall hereinafter be referred to as "husband" and Shehnaz Sani shall hereinafter be referred to as "wife".

2. The wife had filed petition for divorce and other reliefs in the Family Court at Bandra, Mumbai, being M.J. Petition No. A-1945 of 1992. The said petition was decided by the learned Judge of the Family Court by judgment and order dated 30th September, 2005.

3. Being aggrieved by the said judgment and decree dated 30th September, 2005, the wife filed Family Court Appeal No. 38 of 2006 in this Court. In the course of hearing of the said Family Court Appeal No. 38 of 2006, it was brought to the notice of this Court that the suit filed by the husband against the wife, being Suit No. 2065 of 1995 is pending. This Court, therefore, considered the

point as to whether the said suit should continue to remain on Original Side or it should be transferred to the Family Court for decision on merits. After hearing the Advocate for husband and the wife, this Court by its Order dated 16th July, 2008 came to the conclusion that the said Suit No. 2056 of 1995 should be transferred to the Family Court at Bandra, Mumbai and accordingly passed an order thereby transferring the said Suit No. 2056 of 1995 to the Family Court, Mumbai, for disposal in accordance with the provisions of law. The said suit contains various prayers. This Court, by order dated 16th July, 2008 observed that the prayer Clause (a) in the said suit has become redundant and therefore the Family Court is not required to decide the same. That order has been allowed to attain finality. This will mean that on transfer of the said suit to the Family Court, the Family Court was required to decide the prayers commencing from prayer Clause (b) onwards.

4. The husband had prayed for following reliefs in the said Suit which was renumbered as Petition No. B-153 of 2008:

(b) that this Hon''ble Court be pleased to declare that the Defendant has No. right, title or interest of any nature whatsoever in the flat being Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049.

(c) that this Hon''ble Court be pleased to order and decree the deletion of the name of the Defendant from the records of the Milton Co-operative Housing Society Limited with regard to the said flat being Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049, from the membership of the said society, from the shares bearing distinctive numbers 71 to 75 of Rs. 50/-each issued by the said society in the Share Certificate No. 15 dated 18th October, 1988 and from the Agreement for Sale dated 26th June 1985, being Exhibit "F" hereto:

(d) that this Honourable Court be pleased to restrain the Defendant by a mandatory order and injunction from entering into, remaining upon, using, occupying and/or possessing the said flat being Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 40 049 or any part or portion thereof:

(e) that this Hon''ble Court be pleased to restrain the Defendant, her servants, agents and/or representatives and/or any person or persons claiming under or through her by a perpetual order and injunction from in any manner dealing with, disposing of, mortgaging, transferring, assigning, selling, conveying and/or creating any third party right or interest in the said flat No. A-702, Milton Apartment, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049 or any part or portion thereof:

(f) that this Hon''ble Court be pleased to restrain the Defendant, her servants, agents, and or representatives and/or any person or persons claiming under or through her by a perpetual order and injunction from in any manner interfering with, stopping, preventing, obstructing and/or intermeddling with the use, occupation, enjoyment and possession of the Plaintiff of the said flat being Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049 or any part or portion thereof:

(g) that this Honourable Court be pleased to restrain the Defendant, her servants, agents and/or any person or persons claiming under or through her by a perpetual order and injunction from in any manner removing and/or taking away any of the articles of furnitures, fittings electronic items like washing machine, cooking range, air-conditioners, mixtures, grinders, vacuum cleaners, telephones, items of cutlery, items of crockery etc, including the items mentioned in Exhibit "G" hereto lying and being in the said flat being Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049:

(h) that this Hon''ble Court be pleased to declare that the Defendant has No. right, title or interest of any nature whatsoever in the air-conditioned motor car of Maruti make bearing Registration Nos. BLN 5165:

(i) that this Hon''ble Court be pleased to order and direct the Defendant to deposit in this Hon''ble Court all the papers pertaining to and connected with the air-conditioned Maruti car bearing Registration No. BLN 5165 along with the transfer papers duly signed by the Defendant for transfer of the said car in the name of Plaintiff and to handover possession of said car to the Plaintiff.

(j) that this Hon''ble Court be pleased to restrain the Defendant, her servants, agents, representatives and/or any person or persons claiming under or through her by a perpetual order and injunction from in any manner dealing with, disposing of, hypothecating, parting with possession of, selling, transferring and/or assigning the said air-conditioned Maruti car bearing Registration No. BLN 5165 except in favour of the Plaintiff.

(k) that the Defendant be ordered and directed by this Hon''ble Court to disclose full and complete particulars of all the dealings made by the Defendant from the amounts withdrawn by the Defendant from the Saving Bank Account No. 5040 with the Bazaar Branch of the Syndicate Bank at Matunga and/or the NRE Account No. 253 with the Main Branch at Matunga of Syndicate Bank and/or the NRE Account No. 6684 with the Juhu Tara Road Branch of the Union Bank of India and be further pleased to order and direct the Defendant to render true, complete and faithful accounts in that behalf and such accounts be made and taken upon the basis of wilful default committed by the Defendant and after ascertaining what is due to the Plaintiff, a decree for payment of such amount be passed in favour of the Plaintiff with interest thereon at the rate of 18% per centum per annum from the date of the suit till payment and/or realisation:

(l) that the Defendant be ordered to disclose all items of jewellery, gold and costly articles purchased by the Defendant from and out of the amounts belonging to the Plaintiff and hand the same over to the Plaintiff:

(m) that the Defendant be ordered and decreed to render true, complete and faithful account of her investments made from out of the amounts of the Plaintiff including the investment of US Dollars 27,000/-in the Motel business of the sister/ brother-in-law of the Defendant in the United States of America, the Cable Television business run in the name or names by herself and/or with the said Bobby Shah and/or any other person or persons and be further ordered and decreed to pay over to the Plaintiff the profits made/interest earned therefrom:

(n) for the purpose aforesaid all necessary enquiries be made, orders be passed, directions be given and accounts be taken as may be necessary.

(o) that pending the hearing and final disposal of the suit the Defendant by herself, her agents, servants, representatives and/or any person or persons claiming under or through her be restrained by an order and injunction of this Hon''ble Court from in any manner dealing with, disposing of, mortgaging, transferring, assigning, selling, conveying, letting and/or creating any third party right or interest in the said flat being Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049:

(p) that pending the hearing and final disposal of the suit the Defendant by herself, her agents, servants, representatives, and/or any person or persons claiming under or through her be restrained by an order and injunction of this Honourable Court from in any manner dealing with, transferring, assigning, selling, and/or creating any third party right or interest in the said air conditioned motor car of Maruti make bearing Registration No. BLN 5165:

(q) that pending the hearing and final disposal of the suit the Defendant by herself, her agents, servants, representatives and/or any person or persons claiming under or through her be restrained by an order and injunction of this Hon''ble Court from in any manner dealing with, disposing of, pawning, transferring, assigning, selling and/or creating any third party right or interest in the items of jewellery, gold and costly articles in the custody of the Defendant:

(r) that pending the hearing and final disposal of the suit the Defendant by herself, her agents, servants, representatives and/or any person or persons claiming under or through her be restrained by an order and injunction of this Hon''b;e Court from in any manner dealing with, disposing of, hypothecating, parting with possession of, selling, transferring, removing and/or creating any third party right or interest in the articles being and lying in the said Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049 including the items mentioned in Exhibit "G" annexed hereto:

(s) that pending the hearing and final disposal of the suit the Defendant by herself, her agents, servants, representatives and/or any person or persons claiming under or through her be restrained by an order and injunction of this Hon''ble Court from in any manner interfering with, stopping, preventing, obstructing and/or intermeddling with the use, occupation, enjoyment and possession of the Plaintiff of the said flat being Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049 and any part or portion thereof with the articles including those listed in Exhibit "G" annexed hereto:

(t) that pending the hearing and final disposal of the suit the Defendant be ordered and directed by the Hon''ble Court to disclose full and complete particulars of and to render true complete and faithful account of all the dealings made by the Defendant from the amounts withdrawn by the Defendant from the Savings Bank Account No. 5040 with the Bazaar Branch of the Syndicate Bank at Matunga (C.R.) the NRE Account No. 253 of the Main Branch of the Syndicate Bank at Matunga (C.RE.) and the NRE Account No. 6684 with the Juhu Tara Road Branch of the Union Bank of India at Juhu with particular reference to the items of jewellery, gold and other costly things purchased by the Defendant from out of the amounts given by the Plaintiff and/or caused to be used by then Defendant:

(u) that pending the hearing and final disposal of the suit the Defendant be restrained by a mandatory order and injunction of this Hon''ble Court from entering into, remaining upon, using, occupying and/or possessing the said flat being Flat No. A-702, Milton Apartment, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 049 or any part or portion thereof:

(v) that pending the hearing and final disposal of the suit the Court Receiver, High Court, Bombay or any other fit or proper person be appointed as the Receiver of the said Air Conditioned Motor Car of Maruti make bearing Registration No. BLN 5165 with all powers under Order XL Rule 1 of the Code of Civil Procedure, 1908 with directions to such Receiver to appoint th Plaintiff as his agent and handover the said Maruti car to the Plaintiff without any security and/or premium and/or royalty and/or on such terms and conditions as this Honourable Court may deem fit and proper:

(w) that pending the hearing and final disposal of the suit this Honourable Court be pleased to stay the hearing of M.J. Petition No. A-1945 of 1992 and all interlocutory applications taken out therein pending before the Hon''ble Family Court at Bandra, Bombay:

(x) that ad-interim reliefs in terms of prayer Clauses (o), (p), (q), (r), (s), (t), (u), (v) and (w) be granted:

(y) that cost of the Suit be provided for:

5. As per the directions given by this Court, the learned Judge of the Family Court decided the suit on merits and passed the following order:

The petition is partly allowed with costs. The Petitioner is declared as absolute owner of flat No. A-702, Milton Apartment, 7th Floor, Juhu Tara Road, Koliwada, Mumbai 400 049.

So far as prayer of mandatory injunction is concerned, it is rejected. The decree be drawn accordingly.

6. As indicated earlier, being aggrieved by this Order, the husband and wife have

respectively filed the aforesaid two appeals.

7. The husband has filed present Appeal No. 131 of 2009. It is noticed on the basis of. the appeal memo that the challenge to the aforesaid order is with reference to that part of the order by which the prayer for mandatory injunction is rejected. So far as the wife is concerned, the wife is aggrieved by the aforesaid judgment on the ground that the claim of the wife that she has 88% of the share in the aforesaid flat is negatived. The wife is also aggrieved as the learned Judge has declined to grant reliefs claimed by her, which were set out in her counter claim. Said reliefs are mentioned at the end portion of the written statement. It is to be noted that the husband has in his examination in chief at paragraph 15 specifically stated that he is pressing prayer Clause (b) which reads as under:

(b) that this Hon''ble Court be pleased to declare that the Defendant has No. right, title or interest of any nature whatsoever in the flat being Flat No. A-702, Milton Apartments, 7th Floor, Juhu Tara Road, Koliwada, Bombay 400 009.

8. In paragraph 16 he has further stated that he is pressing for prayer Clauses (f), (g), (i), (m) and (y). A reading of paragraph 16 clearly goes to show that the rest of the prayers have been given up by him and his evidence is restricted in regard to the prayers as mentioned aforesaid. A look to the aforesaid prayer clauses i.e. prayer Clauses (b), (f), (g), (i), (m) and (y) would go to show that the husband had given up his mandatory prayer as regards restraining the wife from entering into, remaining upon, using, occupying and or possessing the said flat or any part or portion thereof. A reading of other prayers which have been given up by the husband would clearly go to show that he had given up his various mandatory prayers. It is noticed that the learned Judge of the Family Court did not take into consideration the contents of the written statement as regards the prayers made in the written statement in paragraph 95. The learned Judge framed following issues:

(1) Does the Petitioner prove that he is the absolute owner of flat No. A-702 Milton Apartments, Juhu Tara Road, Koliwada, Mumbai?

(1A) Whether he is entitled for mandatory injunction restraining her from entering into or using or occupying or possessing Flat No. A-702, Milton Apartments, Juhu Tara Road, Koliwada, Mumbai.

(2) What Order and decree?

9. We have perused the grounds of appeal put up in Family Court Appeal No. 131 of 2009 filed by the husband and it is noticed that the grounds of appeal relate to the prayer Clause (d) only. The husband has not made any grievance as regards prayers (f), (g), (i), (m) and (y) of the Petition. In Family Court Appeal No. 148 of 2009, the wife has made grievance as regards prayers set out in the written statement.

10. With the aforesaid discussion, it would now be convenient to state the case put up by the respective parties. The husband has stated that he came in contact

with the wife prior to November 1975 and wife got converted to Hindu religion in 1975 and thereafter they got married on 9.11.1975 as per the Hindu Vedic Rites. There are some averments in the petition whereby the husband has claimed that at the later point of time the husband adopted Islam Religion, and a Nikah was performed between husband and wife. In view of the order dated 16.7.2008 passed by this Court, in Family Court Appeal No. 38 of 2006, by which it is observed that relief in terms of prayer Clause (a) has become redundant, there is No. need for this Court to dwell upon the said stand of husband about remarriage with wife. The husband was working as Medical Officer in Central Railway from 1966 to 1983. In the year 1983, the husband could secure a job in the Ministry of Health at Saudi Arabia as Medical Officer. He was posted as Medical officer at Gizan. It is admitted by both the sides that the wife gave birth to a daughter on 9th December, 1976 who was named as Sonia. It is admitted that second daughter was born to the couple on 5th October, 1980. The said daughter was named as Shahzia. Considering the relevant dates Sonia attained majority on 9th February, 1994 whereas Shahzia attained the age of majority on 5th October, 1998. It is admitted by both the sides that husband''s father was a tenant in respect of a flat at Vasudev Sadan, 1/3730 Telang Cross Road No. 3. Matunga, Mumbai (hereinafter referred to as "Tenanted Flat"). After the marriage the husband and wife started residing at Railway Quarters. The husband''s brother Anand was staying in the said flat upto 1980. Thereafter the husband, wife and daughters shifted to said flat in January 1980.

11. The husband had a Saving Bank Account with Syndicate Bank at Matunga, Mumbai, being Account No. 5040. As the husband joined the service at Gizan, a non resident NRE Account was opened by the husband at Syndicate Bank, Matunga, Mumbai, being Account No. 253. In the year 1986 another NRE Account was opened with Union Bank of India, Juhu, Mumbai, being Account No. 6684. According to the husband, in the year 1984 the husband decided to purchase a flat at Juhu and accordingly M/s. Veena Beena Developers were contacted for the purchase of the said flat. The husband had given due authority to wife to represent him with the Developer. According to the husband, it was decided that Flat No. A-702, Milton Apartments, 7th Floor, Juhu-Tara Road, Koliwada, Bombay - 400 049, (hereinafter referred to as "said flat"), should be purchased. According to the husband, an amount of Rs. 3,85,000/-was to be given to the developer in connection with the said flat and it was decided that said amount would be paid to the builder as loan in the first instance and at the time of actual transaction, the consideration would be paid. As per this arrangement, a sum of Rs. 3,85,000/-was paid to the said developer as loan from and out of the NRE Account No. 253 with Syndicate Bank, Matunga Branch, Mumbai, as follows:

Amount

Date

Rs. 2,00,000/-

11.12.1984

Rs.1,00,000/-

31.01.1985

Rs.50,000/-

20.02.1985

Rs.35,000/-

19.03.1985

The receipts have been issued in regard to the aforesaid payments and those receipts are at Exhibits 169, 335, 336 and 169A, respectively. According to the husband, the sum of Rs.,3,23,375/-were to be paid by cheque and a sum of Rs. 3,38,000/-were to be paid in cash (not to be accounted) towards consideration for the said flat. The stamp duty payable was in the vicinity of Rs. 19,500/-i.e. total cost of the flat was Rs. 6,89,175/-. According to the husband, on 22.6.1985, the Developer returned the sum of Rs. 3,85,000/-by way of cheque in the name of husband and the wife managed to deposit the said cheque in her Account No. 24387 Syndicate Bank, Matunga, Mumbai, by adding the name of the husband in the said account. This was done by taking the help of the Branch Manager Mr. Kamat. That is how the sum of Rs. 3,85,000/-was credited to the said account. According to the husband a pay order in the sum of Rs. 3,23,375/-was obtained from the said account and the said sum was paid over to the Developer as consideration for the said flat. According to the husband, a sum of Rs. 3,37,000 (not to be accounted for) was raised by surrendering the tenanted flat at King Circle. According to the husband, the aforesaid sum of Rs. 3,37,000/-so received was utilized for paying the amount to the Developer. The wife had No. right in respect of the said tenanted flat and hence the total consideration payable in respect of the said flat came from the husband and that is how the husband claims that he is the absolute owner of the said flat and that the wife has No. right whatsoever in the said flat.

12. According to the husband, as the husband had to leave India before the actual possession could be taken in respect of the said flat, the Developer had given him one agreement to be duly signed by the husband and to be kept with the wife so that at the time of actual execution, the Developer could sign and fill in the blanks. According to the husband, at the time of execution of the said agreement the wife had added her name in the said agreement, however it is noticed that in letter dated 7th March, 1989, Exhibit 90, the wife came out with the stand that her name was added by the Developer.

13. According to the husband, wife addressed letter dated 29th June, 1985 at Exhibit 73 to him and sent the said letter to Gizan. According to the husband, in the said letter at Exhibit 73 dated 29th June, 1985 full details as to how the transaction regarding surrendering possession of the tenanted flat and taking

possession of the said flat took place was mentioned. According to the husband, little before surrendering possession in respect of the tenanted flat, Mr. Anand, brother of the husband had executed affidavit whereby he had expressed his desire to surrender the tenancy right in respect of the tenanted flat.

14. Looking to the points raised in the Family Court Appeal No. 131 of 2009 as also Family Court Appeal No. 148 of 2009, it is not necessary to refer to various averments. Those averments relate to:

(1) car being purchased by the wife from and out of the funds of the husband. (2) Investment made by the wife in U.S.A. by utilizing the funds of the husband. (3) After 1989 the husband finding a change in the wife and the wife withdrawing large amounts from NRE Account disproportionate to the needs and requirements of the wife and children. (4) Wife purchasing lot of jewellery from the monies earned by the husband. (5) Wife having illicit relations with one Mr. Bobby Shah. (6) Issuing draft of USD 17,000 in the name of sister of wife.

15. The husband has in para 48 to 52 of Petition stated as to how the wife treated him with cruelty. In para 53 of the said Petition, the husband has indicated that he gave Talak to wife as per Muslim Law. In para 58 of the said Petition, the husband has admitted that the wife had filed M.J. Petition A-1945 of 1992 at Family Court at Mumbai for divorce u/s 13(1)(ia) and (ib) of the Hindu Marriage Act and had claimed maintenance and sought orders regarding the said flat.

16. According to the husband, between 1975 to 1978 the wife was earning sum of Rs. 700/-by working in Centaur Hotel and that subsequently she joined Saudi Airlines and was earning salary of about Rs. 2,000/-. According to the husband she was dismissed from the service in 1985. It is also the case of the husband that since 1991-1992 the wife is earning a sum of Rs. 15,000/-to Rs. 20,000/-by running cable T.V. Business. It is also the case of the husband that the wife had invested U.S. Dollars 28,000 in United States of America in Motel Business and that the said amount was forcibly taken by the wife from the husband. According to the husband, she was earning further income of Rs. 15,000/-to Rs. 20,000/-per month from Motel business. The husband claims that the wife had made investment locally, from which she is earning substantial amount.

17. The husband has in paragraph 62 specifically averred that the outgoings of the society are paid by him. According to the husband, the wife has No. right in respect of the said flat and that wife should account for the gold jewellery and costly items and she should return the same to the husband. The husband wants that the record of the society is liable to be rectified. Similarly, agreement made with the Developer is also liable to be rectified by deleting the name of the wife from the said agreement. He also claims that the Maruti Car is liable to be transferred from the name of the wife in his favour. He also claims that the wife is not entitled to enter into or use, occupy and or possess the said flat or any part thereof. On the basis of the aforesaid averments, the husband has prayed

for diverse reliefs as set out in the prayer clauses. We have already indicated that the husband has clearly indicated in his evidence affidavit that he is pressing for prayer Clause (b), (f), (g), (i), (m) and (y) only.

18. The wife has filed written statement. She admits that she embraced Hindu Religion and she got married with the husband on 9th November, 1975. She also admits that the husband worked with Central Railway from 1966 to 1983. She admits that the husband worked with Ministry of Health, Gizan, Saudi Arabia, from 1983 to 1992. She denies the stand of the husband that he embraced Muslim Religion and Nikah was entered into. She admits that in 1977 she embraced Muslim Religion. She denies that the Plaintiffs brother Anand left the said premises in 1980. The opening of the two NRE Accounts to which the reference is made by the husband is admitted. She denies having spent monies on gold and other ite Ms. She has denied the averments as regards her brother residing with the husband in or about 1972. She admits that her brother came to reside with her after her marriage with the husband in the year 1975 and claims that his boarding and lodging charges were paid by the said elder brother.

19. The wife has denied the story put up by the husband as regards purchase of flat from the funds of the husband, advancement of loan to the Developer only by husband. It is the stand of the wife that the tenanted flat was in dilapidated condition and it required heavy repairs and renovation. According to the wife, she spent about Rs. 1 lakh out of her own earnings and monies from her brother who was working as Manger in a Five Star Hotel to renovate the tenanted flat. According to her, on account of renovation done by her, the landlord of the tenanted flat agreed to pay sum of Rs. 3,38,000/-to the husband as well as his brother Anand. According to her the husband''s brother Anand was required to be paid monies towards his share in the tenanted flat and that said Anand had agreed to execute a bond on getting Rs. 1,68,000/-being 50% of his share of the total amount which was to be received from the landlord. It is her case that she had a right in the said tenanted flat and that is why instead of paying a sum of Rs. 1,68,000/-to Anand, a sum of Rs. 1,00,000/-was paid and a sum of Rs. 18,000/-was not paid. According to the wife, the balance sum of Rs. 50,000/-was not paid as said amount was towards her share in the tenanted flat. According to the wife, if the flat would have been surrendered without renovation it would have fetched sum of Rs. 2,00,000/-only and that is how she claims that on account of renovation of the tenanted flat at her cost, an extra amount of Rs. 1,37,000/-was received. According to the wife, it was decided between the husband and the wife in the year 1983 itself that savings of the husband would be utilized for the purpose of purchase of the flat. The wife has admitted payment of Rs. 3,85,000/-to the developer as loan from December, 1984 to March, 1985. The wife has reiterated that the 4 receipts issued for the above payments were issued in the joint names of husband and wife and name of wife was first in the said receipts. According to wife, these facts go to show that she had a right in the said flat. According to wife, since the transaction regarding said flat was to be in the joint names, there was No. question of wife obtaining

receipts from the developer in the name of husband only.

20. It is admitted by the wife that at or about the time when the transaction in regard to the said flat was to be finalized, the developer issued a cheque in the name of the husband in the sum of Rs. 3,85,000/-towards the repayment of the amount advanced earlier as loan. The Defendant admits that she had an Account No. 24387 with Syndicate Bank, Matunga Branch, Mumbai. She admits that with the help of the Branch Manager, Mr. Kamat, of Syndicate Bank, Matunga Branch, Mumbai, the name of the husband was inserted in the said bank Account No. 24387 though the husband was not the Account holder and thereafter the said cheque was cleared and a sum of Rs. 3,23,375/-was paid to the developer for the purchase of the said flat by drawing a pay order. It is further admitted by the wife that the landlord of the tenanted premises handed over the sum of Rs. 3,37,000/-to the builder and that the possession of the said flat was delivered to the wife. It is the case of the wife that the husband suggested to the wife that if the said flat is purchased from his NRE Account, then there would be No. Income Tax hassles and it is in these circumstances the wife agreed with the husband''s suggestion and started saving the amount in the husband''s NRE Account. She claims that she spent all her earnings upto July 1985 towards household expenses for the maintenance of herself and the two daughters and did not withdraw any amount from the husband''s NRE Account from March 1983 to April 1985 except Rs. 8000/-, although she had full authority to do so. It is also her stand that she wanted to educate her two daughters in USA for which she was in need of foreign currency and that is how she saved foreign currency in her husband''s NRE Account. According to her, on account of efforts made by her to accumulate monies in the NRE account of the husband, purchase the said flat was possible. With this stand she claims that she has contributed Rs. 2,16,000/-to the husband''s NRE account within the period of 27 months i.e. from March 1983 to June 1985 at the rate of Rs. 8000/-per month. She claims that she was earning Rs. 5000/-per month as salary and allowances from M/s. Saudi Arabian Airlines. It is also her stand that she used to get sum of Rs. 3000/-per month by way of two months extra salary as bonus and leave travel allowance and by selling certain imported items which she received as gifts from friends and relatives, which they used to bring from abroad. It is also her case that her brothers and sisters used to send her gifts on account of birthday in the form of U.S. Dollars through the husband by depositing in husband''s NRE account because they were knowing about her desire to accumulate the foreign currency. The wife has, in paragraph 26 of written statement, indicated her contribution for purchase of the said flat which is as follows:

i) Amount paid by the defendant to the plaintiff?s brother AnandMudbhatkal in March 1985 for surrendering his tenancy rights in the rented premises.

Rs.1,00,000/-

ii) Excessive Surrender Value paid by the Landlord for the rented premises in lieu of the premises being renovated from A to Z and given a posh look at the expense of the Defendant and her relatives

Rs.1,37,000/-

iii) Amount accumulated by the Defendant in the plaintiff?s N.R.E. Account No.253 from mid March 1983 till the purchase of the flat in June 1985 (27 months) at the rate of Rs.8000/- per month as per the Agreement and understanding between the plaintiff and the defendant that the flat would be purchased through a foreign currency account to avoid income tax queries and hassles

Rs.2,16,000/-

iv) Surrender value?s share amount to be paid to the plaintiffs brother forfeited on account of the Defendant claiming her tenancy right in the rented premises

Rs. 50,000/-

v) Total contribution by the Defendant

Rs.5,03,000/-

vi) Total purchase amount of the flat

Rs.6,61,675/-

Balance Amount

Rs.1,58,675/-

21. In said paragraph 26 at the end, wife has claimed that out of the balance amount of Rs. 1,58,675/-, 50% of the same is her rightful share as according to her this amount was earned by the husband through the job in Saudi Arabia for which she had to struggle a lot. In addition to her contribution towards purchase of the flat at Rs. 5,03,000/-she claims a contribution of Rs. 79,337/-being 50% of Rs. 1,58,675/-.

22. The wife has stated that her services came to be terminated in or about June, 1985 and that she had to file a case in the Labour Court for reinstatement being Case No. IDA-439 of 1986. It is admitted by the wife that as per the award dated 16th April, 1996 the Court ordered her reinstatement. It is the contention of the wife that on account of her major contribution towards the purchase of the said flat, in the letter dated 28th March, 1985 Exhibit-47 addressed to the Developer, her name stands first in the signatories of the said letter. According to her the very fact that the husband has signed below her signature shows that the husband has accepted her major contribution. According to her in the flat purchase agreement her name should have been first. She claims that the flat purchase agreement ought to be amended accordingly.

23. It is the case of the wife that prior to the purchase of the said flat, the husband was fully aware about the wife''s major contribution and share in the

purchase of the said flat, and even then, he addressed three contrary letters to the said society. According to her by letter dated 7th March, 1992 Exhibit 341, the husband informed the society that her name was added for the sake of convenience, since he was out of India when the flat was purchased. By letter dated 25th April, 1992 at Exhibit 173, the husband informed the said society that the wife inserted her name in the flat purchase agreement as well as share certificate in his absence and therefore, her name is shown as joint holder of the said flat. By letter dated 3rd May, 1992 at Exhibit 172, the husband informed the said society that wife got her name inserted in the flat purchase agreement by fraud and without the knowledge or consent of the Plaintiff. The wife has stated in para 27 that on account of the aforesaid correspondence, her reputation in the society was brought down and her two children suffered tremendous mental agony and that is how she expects that she should be compensated to the tune of Rs. 50 lakhs and has prayed accordingly.

24. So far as the membership of the said society, the wife has relied upon the provisions of Section 2(19)(a) of the Maharashtra Co-operative Societies ` and the bye laws of the Co-operative society. According to her, on account of the information supplied to the Co-operative Society at the time of the formation of the society, her signatures are appearing on the necessary applications. She claims that persons concerned with the society instructed her to fill up the details in the said form as per the flat purchase agreement and since the name of the husband stood first in the said agreement, they instructed her to sign on his behalf. According to her, she followed the said instructions. According to her as the husband was not residing in the said flat and as the signature was not appearing on the said form, there was No. question of his name appearing in the share certificate. She claims that the said share certificate ought to be cancelled. In para 30 of her written statement she has narrated the fact and acts of the office bearers of the society. She has submitted that on account of the high handed, oppressive, insulting and contumacious behaviour of the members of the society, namely Mr. Hansel D''Souza and Mr. G.P. Singh who were representing the said society, she suffered damage, pain and injury. She has therefore claimed Rs. 25,00,000/-as damages from the society. The Defendant, in para 31 has admitted that she had full authority to operate the NRE Account of the husband. She has stated that the she had written a letter dated 29th June, 1985 at Exhibit 73 in which she had given complete details as regards purchase of flat.

25. In paragraph 32 of the written statement wife has indicated as to how the document titled as Agreement to Sale came to be executed. She states that the husband had to return to Saudi Arabia by 31st March, 1985 and the agreement could not be executed prior to that. She states that the printed agreement was in the custody of the partners of the Developer and the said agreement was never in her possession. It is the case of the wife that the husband suggested to the builder that he would sign on a printed agreement and the same can be executed on the payment of money to Developer. According to the wife, if at that time the husband was to be the only signatory to the agreement then he would have very

well refused to sign on the blank printed agreement and/or he could have suggested that the same be sent to him to Saudi Arabia by Courier for signature after all payments were made. According to wife, if husband was to be the only signatory to the agreement, he should have and would have filled up and insisted on filling up his name at page 1 of the agreement and if he had done so, his name is as long as ''Arvind Ramkrishna Mudbhatkal'' it would have covered the entire space, leaving No. space for any addition of the name. According to wife, it is evident that husband signed on the printed agreement and left the space blank because it was to be filled up in the joint name. According to her, it was the suggestion of the husband and that he volunteered to sign on the printed agreement, he could not use this stand to grab the rightful share of the wife in respect of the said flat. According to her, the case of the husband that the printed agreement was kept with the wife after the husband''s signature is false. She claims that the said agreement was in the custody of the Developer. She denies the claim of the husband that she added her name in the said agreement after his departure to Saudi Arabia. The allegation levelled by the husband against wife, that the wife practised fraud in the matter of execution of agreement is denied by her. The wife has No. doubt referred to letter dated 7th March, 1989 Exhibit-90, sent by her to the husband where she has stated "Even for this flat, I never told them to put my name. They did it themselves. You can even ask them about it." An explanation is sought to be offered so far as the contents of these words by saying that while writing the said letter she was angry and upset. She has further claimed that the aforesaid words show that she was not materialistic and that she did not bother about the flat being in her name despite her major contribution in the flat as stated herein before. She has clarified that by the said words she meant that she never bothered to remind the developers to ensure that they entered her name also in the agreement as per the receipts of the payment of the entire white amount being in the joint name, in accordance with letter dated 28th March, 1985, Exhibit-47.

26. According to the wife, all the articles in the said flat, except Pioneer Music System were purchased by her. According to her, out of the total sum of Rs. 1,27,000/-on the interior of the house, a sum of Rs. 25,000/- only was contributed by the husband.

27. In paragraph 34 the wife has given explanation about the Maruti Car. It is not necessary for us to mention about the said explanation as the question regarding the car is not required to be decided by this Court in the aforesaid two appeals. Same is the case as regards the loan arrangement with M/s. Apple Leasing for the purchase of the car.

28. Since the husband had levelled the allegations against the wife in regard to the matters such as purchase of car, illicit relationship with Bobby Shah, investment of money in motel business in USA, the wife was required to deal with those allegations. Considering the scope of dispute raised in these two appeals, it is not necessary to mention wife''s stand as regard those allegations.

The wife has, in paragraph 78 of the written statement, claimed that when the husband returned to India from Saudi Arabia for work, he had over Rs. 50 lakhs as accumulated wealth in various fixed deposits in the Bank of America, City Bank, in India and abroad. According to her, as per her contribution and the understanding that was existing between she and her husband that she could maintain his job and share 50% of the salary, the wife is entitled to 50% of the Plaintiffs accumulated wealth. On this basis, she has claimed a sum of Rs. 25 lakhs on this count along with interest from March 1992 onwards.

29. It is the case of the wife that in or around October 1988, the husband and wife had applied for 12 NRI Bonds of U.S. Dollars each of U.S. Dollars 500 totalling U.S. Dollars 6000 in Mumbai issued by State Bank of India and the said bonds were issued in the joint names of the husband and wife. According to her, the husband managed to cancel the said bond certificates issued in the joint names of the husband and wife and the husband got re-issued the bond certificates in his sole name and on maturity arranged to receive Indian rupees equivalent to U.S. Dollars 13124.28. The wife claims that she is entitled to receive 50% of the said amount along with interest from 15th March, 1996.

30. According to the wife, the total purchase value of the said flat was Rs. 6,61,675/-and that she had contributed Rs. 5,82,337/-and the husband''s contribution towards the said flat is only Rs. 79,338/-. She has therefore sought a declaration that she has 88% share in the said flat. She further claims that the Flat Purchase Agreement should be revised as per the ratio aforesaid. She also claims that as she was the only signatory to the list of members submitted to the Registrar of the Society, therefore she should be declared as the founder member of the said society. She also claims that the said society wrongly and illegally issued share certificate in the name of the husband and the wife when the husband was not present and did not apply for the said share. According to her, Share Certificate No. 15 dated 18th October, 1988 could be cancelled and a fresh Share Certificate should be issued in accordance with her rightful share of herself and the husband. She also claims that her name should stand first in the Flat Purchase Agreement as well as in the Share Certificate. In paragraph 90 of the written statement, she has come out with the case that husband has deliberately and intentionally lowered her dignity and prestige in the society and that is how she is entitled to damages for the harm and damage to her reputation and for the mental agony suffered by her. In paragraph 91 she has narrated as to how Mr. Hansal D''Souza and Secretary, Mr. J.P. Singh intimidated and harassed her. She claims that she should be compensated by the said society to the tune of Rs. 25 lakhs. In paragraph 92 she has stated as to how the husband conspired with her employers M/s. Saudi Arabian Airlines to defeat her case, filed by her. According to her, the husband submitted her personal letters of marital confidence along with other fabricated stories and documents to M/s. Saudi Arabian Airlines and caused tremendous embarrassment. She claims damages for the said embarrassment, injuries suffered by her. In paragraph 93 the wife has alleged that the husband caused irreparable loss and damage to her

reputation. She further claims that he caused grave injury to her. She further claims that the husband spread false stories about her having illicit relationship with others. She claims compensation to the tune of Rs. 93 lakhs by way of damages as per the particulars of claims which are as follows:

1. Damage caused due to the plaintiff informing the society that the Defendant inserted her name in the Flat Purchase Agreement by fraud and without the plaintiff?s knowledge or consent

Rs.25,00,000/-

2. Damage caused due to the conspiring with Milton Society?s Management to falsely acquire the Defendant?s share of the flat

Rs.10,00,000/-

3. Damage caused due to conspiring with Saudi Arabian Airlines and giving the defendant?s personal letters of marital confidence to them.

Rs.15,00,000/-

4. The defendant?s 50% share of accumulated wealth earned by the plaintiff in Saudi Arabia along with interest thereon with effect from February 1992 in view of the Defendant?s contributions

Rs.43,00,000/-

Total

Rs.93,00,000/-

31. The wife has, at the end of the written statement, prayed as under:

a) that this Hon''ble Court be pleased to declare that the Defendant has 88% share in the flat at Milton Apartments and in consequence thereof, the Flat Purchase Agreement be revised accordingly?

b) that this Share Certificate No. 15 dated 18th October, 1988 issued by Milton Apartments Co-operative Housing Society Limited be quashed and set aside, and that it be declared that a fresh Share Certificate be issued in accordance with the Defendant''s share in the flat.

c) that it be declared that the Defendant''s name to stand first in the Flat Purchase Agreement and the Share Certificate of the Society in accordance with letter dated 28.3.1985 addressed to the Builders of Milton Apartments.

d) that this Hon''ble Court be pleased to declare the Defendant as the "Primary/ Founder Member" of Milton Apartments Co-operative Housing Society Limited, Juhu Tara Road, Santa Cruz (West), Mumbai 400 049.

e) that the Plaintiff be ordered and decreed to pay to the Defendant the sum of Rs. 93,00,000/-(Rupees Ninety-three lakhs) with interest thereon @ 24% p.a.

from the date of the filing of the written statement till payment.

f) that Milton Apartment Co-operative Housing Society Limited be ordered and decreed to pay to the Defendant the sum of Rs. 25,00,000 (Rupees Twenty five Lakhs) with interest thereon @24; p.a. from the date of filing of the written statement till payment.

g) that the State Bank of India, Mumbai, be ordered and decreed to pay to the Defendant her share of the NRI bonds amounting to equivalent of U.S. $ 6,562/- with interest thereon with effect from 15.3.1996.

h) that the present suit and all proceedings thereon be stayed till the trial of the proceeding in the Family Court.

i) that the Plaintiff be restrained from entering the matrimonial home of the Defendant where she is residing with her two daughters and/or coming anywhere near it.

j) that pending the hearing and final disposal of the suit, the Plaintiff be restrained from entering the matrimonial home of the Defendant where she is residing with her two daughters and/or coming anywhere near it.

k) that pending hearing and final disposal of this suit, the Plaintiff be restrained from in any manner dealing with, disposing of, mortgaging, transferring, assigning, selling, conveying, leting and/or creating any third party right or interest in the said flat being flat No. A/702, Milton Apartments, Juhu Tara Road, Mumbai 400 049.

l) that pending the hearing and final disposal of the suit, the Plaintiff be restrained from using, removing, selling and/or mortgaging any of the articles and furnitures and fixtures in the said flat as all stand in the name of the Defendant.

m) that ad-interim reliefs in terms of prayer Clauses (j), (k) and (l) above be granted.

n) that the Hon''ble Court be pleased to award costs of the suit and Notice of Motion in favour of the Defendant.

o) that such order and further reliefs be granted as the nature and circumstances of the case may require.

32. It is required to be mentioned that the husband has not filed any formal written statement to the various monetary claims put up by the wife which are set out as aforesaid.

33. On the basis of the aforesaid pleadings, as indicated earlier, following issues came to be framed:

ISSUES

FINDINGS

1) Does the petitioner prove that he is the absolute owner of Flat No.A-702, Milton Apartments, Juhu Tara Road, Koliwada, Mumbai

In the affirmative

1A) Whether he is entitled for mandatory injunction restraining her from entering into or using or occupying or possessing Flat No. A-702, Milton Apartments, Juhu Tara Road, Koliwada, Mumbai.

In the Negative

2) What Order and Decree?

As per final order

34. The learned Judge of the Family Court answered issue No. 1 in the affirmative thereby holding that the husband is the absolute owner of the said flat. He answered issue No. 1A in the negative and consequently refused to grant mandatory injunction restraining the wife from entering into or using or occupying or possessing the said flat. The issue No. 2 was answered as per the final order. The final order is as follows:

The petition is partly allowed with costs.

The Petitioner is declared as absolute owner of the flat No. A-702, Milton Apartment, 7th Floor, Juhu Tara Road, Koliwada, Mumbai 400 049.

So far as his prayer for mandatory injunction is concerned, it is rejected. Decree be drawn up accordingly.

35. At the stage of trial, the husband stepped into the witness box as P.W.

1. No. other witness was examined on behalf of the husband. Wife gave evidence as P.W.1 and No. other witness was examined on her behalf in the said suit.

36. It is required to be mentioned that both the sides had led evidence in the divorce petition which was filed by the wife, being Petition No. A/1945/1992. In the said petition evidence was given by witnesses of respective sides. It is required to be mentioned that in the course of hearing of these two appeals, both the sides relied upon various documents which were produced before the learned Judge of the Family Court, Mumbai, in Petition No. A-1945/1992. Hence those documents will have to be referred for the purpose of deciding the aforesaid appeals.

37. It would be convenient to mention in the first place the agruments advanced by the learned Advocate for the husband. Learned Advocate Ms. Karnik had taken us through the impugned judgment dated 1st June, 2009. She had also taken us through the necessary pleadings and notes of evidence as well as various documents relied upon by the parties. She submitted that the learned

Judge accepted the case of the husband that he is the absolute owner of the said flat. According to her, in the prayer Clause (d) the husband had prayed for mandatory order and injunction restraining the wife from entering into, remaining upon, using, occupation and or possessing the said flat or any part or portion thereof. Learned Advocate Ms. Karnik took us through the reasoning furnished by the learned Judge in regard to the issue No. 1A which deals with the question whether the husband should be granted injunction as prayed by him in terms of prayer Clause (d). She submitted that the marriage between the husband and wife came to be dissolved by a decree passed in Petition No. A/1945/1992 on 30th September, 2005. According to her, once the competent Court had declared that the marriage between the parties is dissolved and that the husband is the owner of the said flat, the learned Judge should have granted the mandatory injunction sought in terms of prayer Clause (d), According to her, the finding rendered by the learned Judge that the said flat is the matrimonial home of the wife, is incorrect. She further submitted that once it is observed that the marriage between the husband and wife is dissolved, the said flat is not matrimonial home of the wife, and the wife had No. right to reside in the said flat and that she should have been asked to vacate the said flat. She, therefore, submitted that the reasoning rendered by the learned Judge while dealing with the issue No. 1A is contrary to the well established principles of law and as such the relief in terms of prayer Clause (d) should be granted. The learned Counsel appearing on behalf of the husband submitted that she reserves her right to reply to the arguments advanced by the wife in connection with her case that she has a share in the said flat as well as her case by which she has sought monetary compensation.

38. The wife, appearing as party in person had taken us through the entire record, so as to substantiate her case on two grounds (i) she has 88 percent share in the said flat (ii) she is entitled to damages as demanded by her, more particularly set out in particulars of claim. The wife had also taken us through the prayers concerning the said flat. The wife had taken us through the notes of evidence and the other exhibits. She submitted that the husband was working in Central Railway upto 1983 and on the basis of the efforts made by her, the husband got employment in the Ministry of Health, Saudi Arabia as Medical Practitioner and he was posted to work as Medical Officer at Gizan. She submitted that she had two goals before her, namely (1) to arrange for accommodation at Mumbai and (2) to save substantial amount for educational expenses of the two daughters. She submitted that when the husband decided to go to Saudi Arabia, it was agreed that the husband''s salary would be utilized for purchase of flat and that by spending monies from her salary she would look after herself and the two daughters and eventually assist the husband to save more amount of monies from and out of the income which he would get by working as Medical Officer in Saudi Arabia. According to her, between March 1983 and June 1985 substantial amount came to be accumulated by her in husband''s NRE Account No. 253 at the rate of Rs. 8000/-per month for 27

months, as per the agreement and understanding between herself and the husband. She submitted that the said flat was agreed to be purchased through the foreign currency account to avoid Income tax queries and hassles. She submitted that from the NRE Account No. 243 with Syndicate Bank, Mumbai she has withdrawn not more than Rs. 8000/-for maintenance of herself and the two daughters. According to her, that facilitated the husband to save substantial amount in NRE Account and eventually pay to the developer towards purchase of the said flat. She submitted that the husband had agreed for this arrangement and therefore there is No. question of husband now turning and claiming that she has No. right in respect of the said flat.

39. The wife submitted before us that the consideration for the said flat to be mentioned in the agreement was Rs. 3,23,375/-and the sum of Rs. 3,38,000/-was to be paid to the developer in cash and not to be accounted. She submitted that since the sum of Rs. 3,38,000/-was to be paid in cash till such time the said amount is paid, the developer was not prepared to execute the agreement and he was not prepared to book the flat. She submitted that in order to overcome this difficulty, it was decided to pay Rs. 3,85,000/-to the developer and show it as loan. She submitted that the following amounts were paid to the developer on the respective dates. The said particulars are as follows:

Date of payment

Amount Rs.

11.12.1984

2,00,000/-

31.1.1985

1,00,000/-

20.2.1985

50,000/-

19.3.1985

35,000/-

Total

3,85,000

She pointed out that receipts were issued by the Developer in the joint names of wife and husband and her name was first. The said receipts are at Exhibit 169, 335, 336 and 169A respectively. She submitted that the very fact that these receipts were issued in the joint name of herself and the husband clearly supports her case that the flat was to stand in the joint name of herself and her husband. She took us through Exhibit 320, being letter dated 28th March, 1985 addressed by her and the husband to M/s. Veena Beena Developers regarding the advancement of loan of Rs. 3,85,000/-. She pointed out in the said letter that she was the first signatory and husband''s signature was at serial No. 2. According to her, this arrangement clearly supports her case that the flat was to be jointly purchased by herself and the husband.

40. The wife, in person, further submitted that as the date for taking possession of the flat was nearing, the Developer issued a cheque in the name of the husband on 22nd June, 1985 and that the said cheque was deposited by her in her Account No. 24387, Syndicate Bank, Matunga branch, Mumbai. She pointed out that the Branch Manager obliged her to insert husband''s name in the said account and arranged to have the pay order for the sum of Rs. 3,23,375/-in favour of the builder. She therefore submitted that it is in these circumstances, the amount payable on the basis of the Agreement to Sale at Exhibit 82 dated 26th June,1985 came to be paid.

41. She, thereafter advanced her submissions as regards the manner in which the sum of Rs. 3,38,000/-was to be paid to the Developer. She submitted that after the death of the father of husband, Mr. Anand, brother of husband and her husband had right in the tenanted flat. She further submitted that as at the relevant time when the said flat was to be surrendered she was residing in the said flat and therefore she also had tenancy right in the said tenanted flat. She submitted that the said tenanted flat required repairs in order to enhance its surrender value i.e. to say if the tenanted flat was surrendered to the landlord in the condition in which it was, the landlord would have paid an amount of Rs. 2,00,000/-only. She submitted that she spent Rs. 1,37,000/-to have the said flat repaired and improve its surrender value. She submitted that on account of the monies spent by her, the surrender value of the said flat got increased to Rs. 3,38,000/-, which amount was paid to the Developer towards the construction of the said flat. She therefore submitted that the amount of Rs. 1,37,000/-spent by her for renovating the said flat to give a posh look should be treated as her contribution in the consideration which was paid to purchase the said flat.

42. She pointed out that Mr. Anand Mudbhatkal, husband''s brother had a share in the tenancy rights and he was not prepared to execute affidavit cum indemnity bond which was required to be handed over to the landlord at the time of receiving the said amount of Rs. 3,38,000/-, unless the said Anand is paid his share in the sum of Rs. 3,38,000/-. She submitted that she had promised to pay to Anand his share and for that she raised the funds with the assistance of her brother and paid to Mr. Anand a sum of Rs. 1,00,000/-. She pointed out that on receipt of the aforesaid sum of Rs. 1,00,000/-Anand executed affidavit cum indemnity bond at Exhibit 175 on 25th March, 1985. She submitted that if Mr. Anand would not have been paid the sum of Rs. 1,00,000/-, he would not have executed the affidavit cum indemnity bond. She, therefore, submitted that in the circumstances mentioned aforesaid, the payment made by her to Mr. Anand to the tune of Rs. 1,00,000/-should be considered as her contribution for the

purchase of the said flat.

43. She had further submitted that as she claimed tenancy right in respect of the said flat, she was entitled to receive a sum of Rs. 50,000/-out of the sum of Rs. 3,38,000/-which were payable by the landlord. She submitted that the Plaintiff''s brother Anand forfeited the sum of Rs. 50,000/-on account of she claiming tenancy rights and therefore the sum of Rs. 50,000/-should be considered as her contribution towards the purchase of the said flat in addition to the earlier contributions.

44. She submitted that the husband had authorized her to withdraw money from the NRE Account No. 253 from time to time. She submitted that she did not withdraw any amount from the said account for maintenance of herself and the two daughters. She submitted that at the relevant time her salary as Air hostess was Rs. 5000/-and she used to get a sum of Rs. 3000/-per month by way of bonus and by way of two months extra salary as bonus, leave travel allowances and selling imported items which she received as gifts from friends and relatives and which she used to bring from abroad, within the permissible limits. She, therefore, submitted that she was utilising nearly Rs. 8000/-per month to maintain the children and herself which amount, otherwise she could have saved in her own name, had she withdrawn the said amount from the Plaintiff''s NRE account. She submitted that due to the agreement that the flat would be purchased with the foreign currency, she spent all her Indian currency on the household expenses and that is how the monies could be raised to advance loan to the Developer and consequently book the said flat. She submitted that from March 1983 till the purchase of the flat in June 1985, she arranged to save a sum of Rs. 8000/-per month from the NRE Account No. 253 and therefore the sum total of the amount saved turns out to Rs. 2,16,000/-i.e. 27 months x Rs. 8000/-. The wife, in person, submitted that in the circumstances mentioned aforesaid, her contribution turns out to be Rs. 5,03,000/-out of the total consideration for purchase of the said flat being Rs. 6,61,675/-. She submitted that the difference between the cost of the said flat and the contribution made by her towards the purchase of the said flat turns out to be Rs. 1,58,675/-. She submitted that she has 50% share in the aforesaid sum of Rs. 1,58,675/-as the said amount was earned by husband through the job in Saudi Arabia as she had struggled to get him the said job and she had struggled to see that he gets a comfortable posting and maintains his job for a period of nine years. She submitted that taking into consideration the aforesaid figures, namely Rs. 5,03,000/-and Rs. 79,337/-(50% of Rs. 1,58,675/-) she has contributed for purchase of said flat to the tune of Rs. 5,82,337/- and that is how she has 88% share in the said flat.

45. The wife submitted that it is in these circumstances, the finding given by the learned Judge of the Family Court, Mumbai that the husband is the owner of the said flat to the exclusion of the wife is wrong. She submitted that the learned Judge of Family Court has not considered the case put up by her through the

evidence placed by her on record and to that extent the learned Judge of the Family Court has erred. She submitted that her case that she has 88% share in the flat is required to be accepted.

46. The wife had taken us through the record to submit that after 1992 as the husband came back to India after leaving his job in Saudi Arabia, the husband changed his attitude and started claiming that she has No. right in respect of the said flat. She pointed out to the court that she was working as Joint Secretary of the Milton Apartment Co-operative Housing Society Ltd., (hereinafter referred to as the said society). She submitted that after the husband raised dispute about her share in the said flat and after the husband addressed letters to the society dated 7.3.1992 Exhibit 341, 25th April, 1992 Exhibit 173, and 23rd May, 1992 Exhibit 172 she was harassed by the office bearers of the society Mr. D''Souza and Mr. Singh. Eventually, she resigned from the said post. She pointed out that her name figured in the Share Certificate issued by the said society. She pointed out that the very fact that her name was inserted in the Share Certificate of the said society clearly supports her stand that she had a right in respect of the said flat. She pointed out her evidence and submitted that in the year 1986 the occupants of Milton Apartment got together and registered the said society. She submitted that she was residing in the said flat and her signature existed in the list of members which was submitted to the Registrar. According to her, as per the provisions of Section 2(19)(a) of the Maharashtra Co-operative Societies Act, 1960 r/w. Bye law No. 17 (note 2) because she was signatory to the application for registration of the society, she should be deemed to be the member of the society. According to her, the Society decided to issue share certificates to all share holders and gave them Form No. 1216 being application form for membership along with Share Certificate data slip and asked her to fill it. As the name of the husband stood first in the flat purchase agreement they asked her to sign on his behalf. She has stated in her evidence that she blindly followed the instructions and that is how Share Certificate No. 15 dated 18th October, 1988 was prepared and issued in their joint names. She, therefore, submitted that on the basis of the aforesaid material she be declared as primary/founder member of the said society.

47. She took us through the Agreement to Sale dated 25th June, 1985, Exhibit 82 and submitted that as her name appears in the said Agreement to Sale, it is clear that she had right in the said flat.

48. On the basis of the aforesaid submissions she submitted that her claim in the said flat to the extent of 88% be accepted.

49. Turning to her prayers in terms of compensation she had taken us through the evidence led by her. She submitted that the husband wrote false letters to the said society stating that she had inserted her name in the flat purchase agreement by fraudulent means and without her knowledge or consent. According to her, the husband spread various allegations in the society alleging affairs with the other persons. She submitted that all this not only lowered her

image in the society, but also caused irreparable loss, damage and injury to her character and reputation, as well as, it affected her children. She submitted that the husband colluded with the then Chairman and Secretary of the Society, namely Mr. Hansel D''Souza and Mr. Gajendrapal Singh, and she suffered harrassment and torture. To submit this, she had taken us through paragraphs, 12 and 13 from her evidence. According to her, on account of the damage suffered by her, she is entitled to receive sum of Rs. 25 lakhs. She also submitted that she is entitled to receive a sum of Rs. 10 lakhs on account of damage caused due to conspiracy with the said society Management by falsely acquiring her share in the said flat.

50. The wife had taken us through the necessary record and had contended that the husband parted with the personal and confidential documents to her employer, such as copy of M.J.Petition, copy of her personal letters of marital conflicts in the Labour Court without obtaining permission from her. According to her, her husband colluded with her employers namely Saudi Arabian Airlines and that is how she had to suffer tremendous embarassment and injury to her feelings. She took us through paragraph 14 of her evidence and submitted that on account of such overt acts on the part of the husband, she is entitled to receive compensation to the tune of Rs. 15,00,000/-.

51. The wife, thereafter took us through the necessary record to contend that she has 50% of the share in the earnings of her husband while he was working at Saudi Arabia. She had submitted that she had to struggle a lot to see that the job of the husband in the Saudi Arabia is maintained and that he is not removed from his service. According to her, on account of the special efforts taken by her to see that husband retains his job in the Ministry of Health and maintains his easy posting, she had to make special efforts. According to her, there was an understanding between herself and the husband that 50% of the income earned by the husband would be that of wife. In paragraph 15 of her examination in chief, she has stated that as of 31st December, 1988 the husband had accumulated wealth of Rs. 60 lakhs in his possession. She has therefore claimed that she is entitled to receive 50% of the said accumulated wealth. The wife has mentioned in her particulars of claim a sum of Rs. 43 lakhs to be received on this count. She submitted that an order in that behalf should be made.

52. The wife, thereafter took us through the necessary evidence at paragraph 23 of her evidence affidavit. She submitted that in the year 1988, 12 NRI bonds of State Bank of India, each of the face value of U.S. Dollars 500 totalling to U.S. Dollars 6000 were purchased in the joint names of herself and the husband. She has stated in her evidence that the State Bank of India deleted her name. She further submitted that as the name of the Plaintiff alone appeared on the said bonds, the maturity proceeds of the said bonds to the extent of Rs. 13,124.28 were paid to the husband. According to her, the manner in which the husband took away the total proceeds of the said bond was illegal as the same was done with the help of State Bank of India. She, therefore, submitted that she is

entitled to receive an amount equal to U.S. Dollars 6562 alongwith interest thereon from 15th March, 1996.

53. The wife in person also submitted before us that since she has 88% share in the said flat, the husband should be restrained from entering the said flat where she is residing alongwith her daughters.

54. The wife drew our attention to prayers at (i) in her counterclaim whereby she has asked for an injunction against the husband restraining him from the matrimonial home i.e. said flat. She had submitted that she is entitled to an injunction in terms of prayer Clause (i). She had in support of submission relied upon following judgements.

i) S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, .

(ii) A v. B. Reported in 1976 BLR (LXXX) 3 & 4

(iii) Gurasz v. Gurasz (1969) 3 All E.R. 822

(iv) Jones v. Jones 1971 2 ALL ER 737

(v) Shehnaz Sani v. Arvind Mudbhatkal Review Petition No. 1108 in Family Court Appeal 38 of 2006, Order dated 19th January, 2009

55. Ultimately, she submitted that her contention that she is the owner of the said flat to the extent of 88% should be accepted. She also submitted that her other prayers set out in the written statement, more particularly stated in prayers be granted.

56. Learned Advocate Ms. Karnik appearing on behalf of the husband opposed the submissions advanced by the wife in person as regards her claim that she has 88% share in the said flat. She also opposed the submissions advanced by the wife as regards her monetary claim and claim regarding share certificate and other reliefs.

57. Learned Advocate Ms. Karnik submitted that it is true that the monies were advanced from NRE Account to the developer to the tune of Rs. 3,85,000/-and the sum of Rs. 3,38,000/-was to be paid to the builder in cash as not to be accounted for. She submitted that it is true that the builder repaid the said loan amount of Rs. 3,85,000/- by a cheque drawn in favour of her client and that the wife arranged to deposit the said cheque in the bank account where the wife was the sole account holder. She pointed out, that the wife, in her letter dated 29th June, 1985 at Exhibit 73 admitted that with the help of the Bank Manager Mr. Kamat, the husband''s name was added in the said account and it is admitted by her that pay order in the name of the builder for the sum of Rs. 3,23,375/-was drawn so as to defray the full consideration of the said flat. She pointed out that in the very letter dated 29th June, 1985 it is admitted by the wife that the sum of Rs. 19,500/-was paid to the builder by pay order for payment of stamp duty by withdrawing monies out of Rs. 3,85,000/-. She further pointed out that in the

said letter it is admitted by the wife that a sum of Rs. 8000/-was paid to the developer by way of pay order towards society deposit. She pointed out that the wife had withdrawn a sum of Rs. 5000/-by cash. Learned Advocate Ms. Karnik submitted, the text of the aforesaid letter clearly goes to show that the total consideration payable in respect of the said flat as also other charges payable towards purchase of the said flat were paid from and out of the husband''s monies which originally were paid to the developer from his NRE Account. According to her, because the developer had drawn the cheque in the name of the husband and as the said cheque could not be deposited in the NRE Account, the wife in order to tie over the said situation arranged to deposit the cheque in her account by joining name of the husband with the help of the concerned Branch Manager. She submitted that merely because the consideration of the said flat and other charges were paid by drawing pay orders from the bank account of the wife, would not mean that the consideration was paid by the wife.

58. Learned Advocate Ms. Karnik submitted that the sum of Rs. 3,38,000/-was to be received from the landlord of the tenanted flat on account of surrender of the said tenanted premises. She submitted that the wife has admitted in her letter dated 29th June, 1985 that the landlord Girishbhai paid a sum of Rs. 3,37,000/-in cash to Mr. Champalal, a representative of the Developer. She pointed out that in the aforesaid letter dated 29th June, 1985 the wife has admitted that the balance of Rs. 1300/-was paid by her. She pointed out that the wife had already withdrawn the sum of Rs. 5000/-in cash from and out of the cheque of Rs. 3,85,000/-deposited in the account of the wife. She further submitted that the sum of Rs. 3,38,300/-came from the husband''s side and the wife did not contribute towards the payment of the said amount of Rs. 3,38,000/-. She therefore submitted that the entire consideration to acquire the said flat was paid by the husband and as such the husband will have to be treated as the owner of the said flat.

59. Learned Advocate Ms. Karnik further pointed out that the case of the wife that she had paid the sum of Rs. 1,00,000/-to Mr. Anand i.e. his brother is not proved at all. The bare word of the wife that she paid the sum of Rs. 1,00,000/-in cash to Mr. Anand cannot be accepted. She submitted that in the said letter there is No. mention of wife paying the sum of Rs. 1,00,000/-to Mr. Anand. She further pointed out that the sum of Rs. 3,37,000/-were paid by Mr. Girishbhai to Champalal and therefore there is No. question on any monetary transaction between the wife and Mr. Anand, at or about the time when the premises were surrendered. She submitted that at the time when the tenanted flat was surrendered, Mr. Anand was not staying in the said flat. She pointed out that the affidavit cum indemnity bond dated 25th March, 1985 at Exhibit 175 indicates that Mr. Anand had surrendered the premises without any condition. Learned Advocate Ms. Karnik, therefore, submitted that the claim of the wife that she had contributed to the extent of Rs. 1,00,000/-by paying the said sum to Mr. Anand is not proved and as such that contention must be rejected.

60. As regards the claim of the wife that wife arranged to repair the tenanted flat by spending Rs. 1,37,000/-and arranged to enhance the surrender value of the tenanted flat to Rs. 3,38,000/-it was submitted that the wife has not produced any evidence to show that she spent Rs. 1,37,000/-to renovate the flat, that the surrender value of the flat was increased from Rs. 2,00,000/-to Rs. 3,38,000/- and that is why it should be treated that the wife has contributed Rs. 1,37,000/- towards consideration to purchase the said flat. Ld. Advocate Ms, Karnik submitted that in the absence of proper evidence the claim of the wife that she had spent Rs. 1,37,000/-to enhance the surrender value of tenanted flat and it resulted in contribution towards consideration should not be accepted.

61. Learned Advocate Ms. Karnik submitted that the purchase of the said flat by the husband is reflected in the Income Tax Returns of the husband for the Assessment Year 1986-1987. She further submitted that the wife has failed to prove that she had tenancy rights in respect of the tenanted flat, because No. document is executed in that behalf in favour of the landlord. The affidavit-cum-indemnity bond is executed by Plaintiff and his brother Mr. Anand, and that the landlord felt satisfied with the said document. She submitted that the wife has not produced any document to show that she had surrendered her tenancy right in respect of the Tenanted flat. Learned Advocate Ms. Karnik submitted that mere claim that wife had tenancy right is not sufficient to accept that she has right in the said tenanted flat. Learned Advocate Ms. Karnik pointed out that the wife claimed tenancy right in the tenanted flat because at one point of time she stayed in tenanted flat. According to Ms. Karnik mere residence by wife for some time in the tenanted flat would not confer right on the wife. Learned Advocate Ms. Karnik therefore submitted that the claim of the wife that she was entitled to receive Rs. 50,000/-from and out of Rs. 3,38,000/-and as such she has contributed to the extend of Rs. 50,000/- should not be accepted.

62. Learned Advocate Ms. Karnik took use through the evidence led by the husband as well as wife as regards the manner in which the agreement to sale was executed. She pointed out that the husband had to leave India by 31st March, 1985 and therefore the document "Agreement to Sale", blank copy, was made available to the husband and that the husband had tendered his signature at the relevant portion and had left the other spaces blank to be filled in by the Developer at the appropriate time. She pointed out that at the time of taking possession of the said flat and execution of the Agreement to Sale, the wife had added her name in the said Agreement to Sale without permission of the husband and that is how the wife tried to create right in respect of the said flat.

63. Learned Advocate Ms. Karnik pointed out that the wife has taken a stand that it is the builder who asked her to include her name in the said agreement to sale at Exhibit 82. In support of this, she took us through the text of the letter dated 7th March, 1989 at Exhibit 90 written by the wife to the husband, where such a stand has been taken. The relevant sentence is as under: " Even for this flat I never told them to put my name. They did it themselves. You can even ask

them". According to learned Advocate Mrs. Karnik this would clearly go to show that the flat was to be purchased only in the husband''s name. Learned Advocate Ms. Karnik therefore submitted that the stand taken by the wife that she has a right in respect of the said flat is an afterthought and that such a stand is taken after disputes between husband and wife arose.

64. Learned Advocate Ms. Karnik further submitted that it has been the stand of the wife that from March 1983 to June 1985 every month, the wife contributed a sum of Rs. 8000/-towards the purchase of the said flat. Learned Advocate Ms. Karnik pointed out that the wife has admitted that her income from her salary at the relevant time i.e. June 1984 to 1985 was Rs. 5000/-per month. She further submitted that it is the case of the wife that the wife used to get a sum of Rs. 3000/-by way of bonus and leave travel allowances and by selling various foreign articles. According to her, there is No. evidence to show that the wife was earning a sum of Rs. 3000/-by way of bonus etc. She submitted that even if the said stand of the wife is accepted, still the stand taken by the wife that the sum of Rs. 8000/-per month got accumulated for 27 months i.e. from March 1983 to June 1985 in the NRE account No. 253 of the husband and that the same should be treated as the contribution made by the wife towards the purchase of the said flat as per the understanding between the husband and the wife should not be accepted. Learned Advocate Ms. Karnik submitted that the stand of the wife that it was agreed that the flat should be purchased from foreign currency account to avoid Income Tax queries and hassles, should not be accepted. She submitted that the flat was to be purchased from the earning of husband and that is how consideration was paid by arranging funds from NRE Account. She further submitted that the wife could not deposit any amount which she had earned in Indian Rupees in the NRE Account. She submitted that even if it is accepted that the wife, at the relevant time was earning Rs. 8000/-and that she has spent whole amount to maintain herself and two daughters, it cannot be considered as contribution by her towards the purchase of the said flat. According to her, since wife was working, she was obliged to spend her earning to maintain herself and two daughters by utilizing said amount earned by her. She, therefore, submitted that the claim of the wife that she had contributed the sum of Rs. 2,16,000/- being an amount arrived at, at the rate of Rs. 8000/-per month, for 27 months cannot be accepted.

65. Learned Advocate Ms. Karnik further submitted that the claim made by the wife as regards the compensation on various counts cannot be granted. She took us through the evidence of the wife by which she wanted to prove that she is entitled to various amounts as per the particulars of claim set out in Exhibit A of written statement. Learned Advocate Ms. Karnik submitted that the wife claims that on account of correspondence between the husband and the office bearers of the society, namely Mr. D''Souza and Mr. Singh and on account of the high handed oppressive, insulting and contumacious behaviour of the society, namely Hansel D''Souza and Mr. G.P.Singh, she is entitled to a sum of Rs. 25,00,000/-. Learned Advocate Ms. Karnik submitted that in the first place, the wife has not

been able to place on record in clear terms as to in what manner the wife suffered high handed insulting, contumacious behaviour of Mr. D''Souza and Mr. Singh. She further submitted that, in any case, the claim is made by the wife against the Co-operative Society. She submitted that there is No. cogent evidence placed by the wife before the Court in support of her case. According to Ms. Karnik, the bare word of wife should not be accepted to hold that she has proved that she has suffered damage as alleged. She further submitted that the wife has claimed damages against the society and as the said society is not a party to the proceeding, in the Petition No. B-153 of 2008 the said claim will have to be dismissed.

66. Learned Advocate Mrs. Karnik submitted that the wife is claiming damages to the tune of Rs. 10,00,000/-from the husband as according to her, she has suffered damage due to the conduct of the husband, as the husband conspired with the Management of the society by writing letters to the society. Learned Advocate Ms. Karnik took us through the evidence adduced by the wife and pointed out that there is No. evidence placed by the wife in support of such a stand and as such her claim is required to be rejected.

67. Learned Advocate Ms. Karnik submitted that the wife has claimed that she suffered damage as the husband conspired with the Saudi Arabian Airlines and gave wife''s personal letters of marital confidence and on account of that the wife had to suffer and that she suffered damage to the tune of Rs. 15,00,000/-. She pointed out the evidence of the wife consists of bare assertion only. She submitted that it was necessary for the wife to lead cogent evidence and prove that she suffered damage as alleged. Ms. Karnik submitted that the bare word of the wife should not be accepted. She, therefore, submitted that the wife''s claim on the above point be rejected.

68. Learned Advocate Ms. Karnik submitted that it is the case of the wife that she had arranged to get a job to the husband in the Ministry of Health, Government of Saudi Arabia, and that the husband could continue the said job on account of the special efforts made by the wife to see that his services are continued and that he gets a comfortable posting. Learned Advocate Ms. Karnik has submitted that in the written statement the wife has contended that there was understanding between herself and the husband that the wife would arrange to maintain his job and share 50% of the husband''s salary. She pointed out that the wife has claimed the sum of Rs. 25 lakhs on this count alongwith interest from March 1997 onwards. Learned Advocate Ms. Karnik submitted that in the particulars of claim the wife has claimed a sum of Rs. 43 lakhs being wife''s 50% share of accumulated wealth earned by the husband in Saudi Arabia along with interest thereon w.e.f. February 1992. She submitted that except putting up such case in her evidence affidavit, there is No. other evidence to come to the conclusion that the wife managed to see that the husband could retain his job and his posting in the services of Saudi Arabian Government. Ms Karnik submitted that the wife has not been able to place any evidence to support her

claim that there was an understanding as alleged by the wife. She further submitted that there is No. evidence to show that the wife exerted to protect the job of the husband. She submitted that the husband had applied with the appropriate department and by following recruitment procedure, the husband was selected to work as Medical officer in the Ministry of Health, Saudi Arabian Government. She submitted that the claim of the wife on this count also be rejected and the same be dismissed.

69. As regards claim of the wife concerning 50% share in the N.R.I. Bonds it was submitted that the wife had not contributed towards purchase of the said bonds. According to learned Advocate Ms. Karnik, the husband was the purchaser and owner of bonds and State Bank of India could issue duplicate bonds to the first name NRI joint holder, if bonds were misplaced/lost. According to her first name NRI Joint holder could delete or add second Resident Joint Holder as pre conditions governing the NRI Bonds. According to Ms. Karnik, Order dated 21.11.1995 passed by Family Court does not decide the rights of the parties. It was submitted that point as regards NRI Bonds was rightly decided by the Family Court. Ms. Karnik, therefore, submitted that the wife''s claim as regards N.R.I. Bonds be rejected.

70. As regards the prayer for injunction in terms of prayer Clause (i), learned Advocate Ms. Karnik submitted that since the husband is declared as owner of said flat and since marriage between the husband and wife has been dissolved by judgment and order dated 30.9.2005 passed in Petition No. A-1945 of 1992 the said flat cannot be treated wife''s matrimonial home and as such she is not entitled to injunction in terms of prayer Clause (i) of wife''s counter claim. Learned Advocate Ms. Karnik submitted that the judgments relied upon by wife would not be applicable to the facts of this case.

71. Learned Advocate Ms. Karnik therefore submitted that the court should hold that the husband is full owner of the flat and that the wife has No. right in respect of the said flat. She submitted that the learned Judge erred in rejecting the mandatory injunction sought by the husband against the wife. She, therefore, submitted that the appeal filed by the wife being Family Court Appeal No. 148 of 2009 be dismissed and that the Appeal filed by the husband be Family Court Appeal No. 131 of 2009 be allowed.

72. On the basis of the aforesaid submission, following points do arise for our determination:

1) Whether the husband is entitled to mandatory injunction as per prayer Clause (d) of Petition No. B-153/ of 2008?

2) Whether the claim of the wife that she is the owner of the said flat No. 702. Milton Apartment, 7th Floor, Juhu Tara Road, Koliwada, Mumbai 400 049 to the extent of 88% is proved?

3) Whether the monetary claims put up by the wife in terms of prayers in the

written statement and more particularly set out in particulars of claim at Exhibit A should be granted?

4) Whether the wife is entitled to relief concerning State Bank of India bonds?

5) Whether the wife is entitled to a fresh Share Certificate in her name as claimed in prayer Clause (b) and (c) of the prayers set out inthe written statement?

6) Whether the wife is entitled to a declaration that her name should stand first in the Agreement to Sale?

7) Whether the wife is entitled to injunction in regard to said flat in terms of prayer Clause (i)?

8) What Order? The answer to the above points are as follows:

1) In the negative.

2) In the negative

3) In the negative.

4) The wife is not entitled to relief concerning State Bank of India Bonds in this proceeding

5) The wife is not entitled to reliefs in terms of prayers (b) and (c)in this proceeding

6) The wife is not entitled to relief in terms of prayer Clause (d) in this proceedings.

7) In the negative,

8) Both the appeals are dismissed with No. order as to costs.

73. We have perused the entire record with the assistance of learned Advocate Ms. Karnik for the husband and the wife in person. We have considered the judgments relied upon by wife. The husband''s stand that he is the absolute owner of the said flat has been accepted by the learned Judge. The learned Judge has refused the mandatory injunction prayed for by the husband in terms of prayer Clause (d) of the petition. In the appeal memo, the husband has put up the grievance about the said refusal. We have perused the evidence affidavit filed by the husband. It is pertinent to note that in paragraph 15 of the said affidavit the husband has specifically stated that he is pressing for prayer Clause (b) in the said petition. Prayer Clause (b) pertains to declaration with regard to the ownership of the said flat and that the said declaration has been granted. The husband has, in paragraph 16 of the evidence affidavit stated that he is pressing for prayers (f), (g), (i), (m) and (y). This would clearly go to show that the husband had made it clear to the learned Judge of the Family Court in terms of evidence affidavit that the husband is not pressing for prayer (d) of the said

petition. It is true that the learned Judge has rejected the mandatory relief as sought in prayer Clause (d). The reasons given by the learned Judge are not acceptable to us. The learned Judge has not taken into consideration the fact that the husband has given up prayer Clause (d) at the stage of recording of evidence.

74. The learned Judge has recorded the finding that the said flat continues to be the matrimonial home. The learned Judge, has in paragraph 97 has observed as follows:

I have already held that it is her matrimonial home and therefore she has right of residence and therefore he is not entitled for grant of mandatory injunction restraining her to stay or enter the matrimonial home and therefore I answer issue No. 2 in the negative

This judgment and order came to be passed on 1.6.2009. It is required to be mentioned that prior to passing of this order, the marriage between the husband and the wife was dissolved by judgment and order dated 30.9.2005 in the Petition No. A-1945 of 1992. It is true that the appeal against the judgment and order dated 30.9.2005 was filed. However, the learned Judge ought to have taken into consideration the fact that the marriage between the husband and wife was dissolved on 30.9.2005. In our view, since the husband had made it very clear that he is pressing certain reliefs as mentioned aforesaid, it clearly showed that he had given up prayer Clause (d). The learned Judge should have noted that aspect of the matter and should have recorded reasons accordingly. We are of the view that the final answer given by the learned Judge in the nature of refusal of grant of mandatory injunction is right, though the reasons are incorrect. The point No. 1 is therefore answered in the negative. As indicated earlier, in the Family Court Appeal No. 131 of 2009 filed by the husband, No. other point was raised and as such the said appeal is required to be dismissed.

75. Now, we proceed to discuss to the claim of the wife in regard the said flat and other prayers set out in the written statement. The learned Judge of the Family Court has not framed proper issues. So far as the issue concerning the flat, only one issue was framed by the learned Judge of the Family Court at issue No. 1. The wife had taken the specific stand that she has 88% share in the said flat and she has advanced her submissions on the basis of evidence placed before the Court.

76. It has been the stand of the wife that after the husband got job at Saudi Arabia to work as Medical Officer in the Ministry of Health, it was agreed between the husband and wife that the husband would earn monies in Riyals and save substantial amount so that said amount can be utilized for purchase of the flat. It was also the stand of the wife that the wife would work in India, earn salary and use it for the maintenance of herself and for the two daughters. It is true that the husband had opened NRE Account at Mumbai with Syndicate Bank of India and that the said account was opened on or about April 1983. Surely the said

account was opened to facilitiate the transfer of monies from Saudi Arabia to India so that the wife would be able to use the monies in India. Perusal of the said Bank Pass Book at Exhibit 157 shows that monies have been transferred from Saudi Arabia to the said account from time to time. The said account is closed in or about October 1986. A perusal of the said pass book, No. doubt shows that the wife has not withdrawn substantial amounts from the said account. However, that by itself does not show that it was agreed between the parties that monies would be saved in the said account for the purpose of purchase of the flat. Except the bare word of the wife, there is No. other evidence to show that it was agreed that the wife would save monies in the said NRE Account and it would be used for purchase of flat.

77. The husband has come out with the case that in or about 1984, the husband and the wife thought of purchasing a flat in Mumbai and that is how the Developer, namely M/s. Veena Beena were approached for the purpose of booking the said flat. It is common ground that in all, a sum of Rs. 3,85,000/-was advanced to the Developer as and by way of hand loan. It is clear that the first installment of Rs. 2,00,000/-was advanced to the Developer on or about 11.12.1984. The husband has stated in his evidence that he had a plan to purchase the flat by end of 1984 and the said evidence is found in paragraph 12(e) of his evidence affidavit. As against this, it is the case of the wife that the couple had decided to acquire a flat in Mumbai in or about 1983. So far as the evidence of the husband as regards his desire to have a flat in the year 1984, is not controverter in his cross examination. The bare word of wife that the flat was agreed to be purchased in the year 1983 cannot be accepted. This point will undoubtedly have some bearing on the stand taken by the wife as regards her contribution to purchase the said flat.

78. It is a common ground that the husband and wife decided to purchase the said flat from M/s. Veena Beena Developers and because cash component was to be handed over to the Developer at the time of taking possession, an arrangement was arrived at between the Developer and the husband and that the Developer would not formally book the flat, but receive an amount by way of hand loan and at the time of actual transaction, the consideration for the flat would be received and the possession would be handed over on receipt of the cash amount. This arrangement is apparent on the basis of evidence of both the sides. The record shows that the sum of Rs. 3,85,000/-was paid to the Developer by way of Demand Drafts from the NRE Account as follows:

Date of payment

Amount Rs.

11.12.1984

2,00,000/-

31.1.1985

1,00,000/-

20.2.1985

50,000/-

19.3.1985

35,000/-

Total

3,85,000

79. The Developer has issued receipts in support of these payments and the said receipts are at Exhibit 169, 335, 336, 169A. These receipts are standing in the name of the wife and the husband. It has been the stand of the husband that these receipts are obtained by the wife in the joint name though it was never contemplated that the said flat would be purchased in the joint name. According to the husband, the sum of Rs. 3,85,000/-was paid from the NRE Account of the husband and in the normal course the receipts should have been issued in the name of husband alone. Much capital is made by the wife so far as these joint receipts. As to what is the effect of the issuance of these joint receipts would be discussed later. The Developer had agreed to sale the flat at price of Rs. 3,23,375/-. It was also agreed between the parties that a sum of Rs. 3,38,000/- would be paid in cash and that the said amount would not be accounted for. After the loan came to be advanced as aforesaid, in or about June 1985 the flat was ready for occupation. It is a common ground that the sum of Rs. 3,38,000/- was to be raised by surrendering the tenanted flat to the landlord. The record shows that the said tenanted flat was surrendered to the landlord and the sum of Rs. 3,37,000/-was paid by the landlord directly to the Developer and that is how the cash component was adjusted. The record also shows that the sum of Rs. 19,500/-were paid to the Developer towards the stamp duty. It is admitted by both the sides that a sum of Rs. 8000/-was paid to the Developer towards the society charges. It is admitted by wife in letter dated 29.6.1985, Exhibit 73 addressed to the husband that these amounts were withdrawn by her as against the cheque of Rs. 3,85,000/-which was issued by Developer and which cheque was deposited by wife in her account.

80. It is admitted by the wife that the tenanted flat stood in the name of the father of the husband and after his death, the tenancy in respect of the said flat devolved upon the husband and his brother Mr. Anand. In addition to this admission, at one stage it was claimed by the wife that she had a right in the said tenanted flat on the ground that she was staying in the said tenanted flat for some time. It is the stand of the wife that the landlord required affidavit cum indemnity bond to be executed by the persons who were claiming tenancy in respect of the said flat. The wife has come out with the case that Mr. Anand, brother of the husband executed affidavit cum indemnity bond at Exhibit 175 dated 25.3.1985 along with the husband and at the time of execution of the said

bond she had paid a sum of Rs. 1,00,000/-to Mr. Anand. A sum of Rs. 68,000/- was required to be paid making it together Rs. 1,68,000/-. Except her bare word, the wife has not placed before the court any evidence to prove that she had paid a sum of Rs. 1,00,000/-to Mr. Anand. It is pertinent to note that the wife had addressed a detail letter dated 29.6.1985 to the husband being Exhibit 73, wherein she had explained as to how the transaction as regards surrender of the tenancy right took place and as to how the sum of Rs. 3,37,000/-were paid by Girishbhai, the landlord to Mr. Champalal, representative of the Developer on 26.6.1985, and the transaction of surrendering the tenanted flat and taking over possession of the said flat took place. Perusal of said letter shows that wife, she had disclosed to the husband all the details in regard to the said flat. If this was the stand of the wife, surely, she would have mentioned about the payment of Rs. 1,00,000/-to Mr. Anand in lieu of affidavit cum indemnity bond. Absence of such a mention in the letter dated 29.6.1985 at Exhibit 73 clearly militates against the wife. The wife had not placed before the Court particulars of date, time and place, when this amount of Rs. 1,00,000/- was handed over to Mr. Anand. Except the bare word about payment of Rs. 1,00,000/-there is No. evidence to support such payment. We are inclined to observe that the stand taken by the wife that she had contributed towards the purchase of the flat to the extent of Rs. 1,00,000/-by way of handing over the said amount to Mr. Anand cannot be accepted.

81. At one stage, the wife has contended that she had a tenancy right in respect of the tenanted flat and as such she was entitled to Rs. 50,000/-from the amount which the landlord was supposed to pay for surrendering tenancy rights. The wife has taken up such a stand while accounting for her total contribution. This stand of the wife cannot be accepted on two counts, firstly the tenancy in respect of the tenanted flat was held by the father of the husband. After his death the tenancy rights in respect of the tenanted flat devolved upon the husband and Mr. Anand. The stand taken by the wife that because she was residing in the said tenanted flat for sometime, she secured tenancy rights, cannot be accepted. Such stand is contrary to the manner in which the tenancy right can devolve upon persons after the death of a tenant. Secondly, it was necessary for her to execute document in favour of the landlord to surrender the tenancy rights which she claimed to be holding. The wife has not produced any document to show that she had surrendered her tenancy right in favour of the husband. As such, the wife''s contention that she had tenancy rights in the tenanted flat is required to be rejected. Consequently, the stand of the wife that she was entitled to appropriate Rs. 50,000/-out of the monies paid by landlord cannot be accepted. Hence, her stand that she contributed Rs. 50,000/-to purchase the flat cannot be accepted.

82. The text of letter dated 29.6.1985, Exhibit 73 sent by the wife to the husband clearly shows that the landlord did not pay the sum of Rs. 3,38,000/- but the landlord paid a sum of Rs. 3,37,000/- directly to the representative of the Developer.

83. The wife had admitted that she had taken Rs. 5000/-from the Branch Manager Mr. Kamat. Surely that amount must have been withdrawn by her from Savings Bank Account where cheque for Rs. 3,85,000/-was deposited, i.e. A/c. No. 24387, Syndicate Bank, and out of the said amount of Rs. 5000/-a sum of Rs. 1300/-was paid to the Developer.

84. The wife has taken the stand that the landlord had agreed to pay a sum of Rs. 3,38,000/-upon surrender of tenanted flat. According to the wife, the tenanted flat required repairs and in order to see that the landlord pays higher amount, she arranged to have the said flat repaired and that she had spent monies for the said repairs. The wife has not been able to place evidence on record in support of this proposition.

85. It has been the stand of the wife that if the flat would have been surrendered to the landlord without repairs, the flat would have fetched a sum of Rs. 2,00,000/-, in that case the landlord would have paid a sum of Rs. 2,00,000/- only. According to her, because she got the flat repaired, the surrender value of the said flat was enhanced to Rs. 3,38,000/-. According to her, the enhanced amount of Rs. 1,37,000/-should be treated as her contribution to purchase the said flat. We are not in agreement with this proposition because the wife has not placed before the Court any evidence to show that she carried out repairs, and on account of the said repairs the surrender value of the flat got enhanced to Rs. 3,38,000/-. The wife has failed to prove that a sum of Rs. 1,37,000/-was received towards enhanced value of the flat and that amount was utilised for the purpose of paying the price of the said flat. In our view, a mere assertion that she repaired the said flat, got the price enhanced and the landlord agreed to pay Rs. 3,38,000/-instead of Rs. 2,00,000/-cannot be equated with proof of said facts. No. other documentary or oral evidence has been produced by the wife to substantiate this plea. It was easily possible for the wife to examine the landlord who had agreed to pay a sum of Rs. 3,38,000/-. If the landlord would have been examined, he would have stated as to under what circumstances he showed willingness to pay a sum of Rs. 3,38,000/-. With that, we reject the claim of the wife she had contributed to the purchase of the said flat to the extent of Rs. 1,37,000/-.

86. The wife has come out with the case that she was earning a sum of Rs. 8000/-per month in India and that she had spent the whole amount of Rs. 8000/- towards her maintenance and the maintenance of the two daughters. It has been her stand that between March 1983 to June 1985 i.e. for 27 months she spent Rs. 8000/- per month for her maintenance and maintenance of the two daughters and that is how the amount equivalent to Rs. 2,16,000/-(Rs. 8000/-x 27 months) got accumulated in the NRE Account of the husband. We have considered this point. It is true that between the period March 1983 to June 1985, the wife has not withdrawn substantial amounts for her personal expenses from the NRE Account No. 253. The evidence on record shows that at the relevant time i.e. between March 1983 to June 1985 the wife was earning a sum

of Rs. 5000/-by way of her salary. This stand of the wife can be accepted. The wife has also come out with the case that she was getting a sum of Rs. 3000/- per month in addition to the aforesaid salary by way of two months extra salary as bonus and leave travel allowance, as also by selling certain imported items which were received as gifts from friends and relatives and which she used to bring from abroad within permissible limits. The wife has admitted that she has No. proof to show that every month she was earning Rs. 3000/-. It was argued on behalf of the husband that in absence of such a proof, the claim of the wife that she was earning Rs. 3000/-per month should be rejected. We are inclined to accept this stand of the husband. Even if it is accepted that the wife was earning in all a sum of Rs. 8000/-(Rs. 5000/-+ Rs. 3000/-) as claimed by the wife and was spending the same to maintain herself and for the maintenance of the two daughters, we are not inclined to accept the stand of the wife that this spending of Rs. 8000/-or any lesser amount by the wife should be treated as her contribution for the purchase of the said flat. The wife, at the relevant time was working and in such a case, it was not expected of the husband to provide for the maintenance of the wife in its entirety as the matrimonial relations between them were healthy. Since the wife was working, it was expected that she would spend for her maintenance from her earning. Similarly, spending of money by the wife from her income for maintenance of daughters was also an obligation to be discharged by the wife. The wife has not been able to place on record as to whether she was required to spend the amount in excess of Rs. 8,000/-. Her oral testimony shows that she spent Rs. 8000/-per month and that is how she looked after herself and the two daughters in India. The wife has not placed before the court her bank passbook to show as to in what way she dealt with her monies which she received and as to whether she could save monies from her earnings. In any case, spending of Rs. 8000/-by the wife towards her maintenance and maintenance of the two daughters cannot be considered as her contribution for the purchase of the said flat. In our view, the contention raised by the wife to that extent cannot be accepted. The record shows that the husband worked in Saudi Arabia. He spent certain amount of monies in Saudi Arabia for his sustenance and went on remitting monies in the NRE Account and that is how the funds came to be accumulated in the said account and those funds were used for the purchase of the said flat.

87. It is not the case of wife that she advanced/paid any money to the husband during the period prior to purchase of said flat from her sources of income. It is admitted by the wife that her entire income has been spent by her to maintain herself and her daughters. Admittedly, the amount lying in NRE Account No. 283 was used to purchase said flat. In the absence of any payment by her to the husband her stand that she contributed towards purchase of said flat cannot be accepted as her entire income has been spent by her to maintain herself and her daughters.

88. For the aforesaid reasons, the stand taken by the wife that the sum of Rs. 2,16,000/-got accumulated in the NRE Account No. 253 from March 1983 to June

1985 at the rate of Rs. 8000/-per month for 27 months cannot be accepted.

89. It is pertinent to note that the wife has come out with the stand that the flat was agreed to be purchased in the foreign currency account to avoid Income tax queries and hassles. This stand of the wife cannot be accepted. The husband was in a position to save amount out of his earnings from Foreign currency and out of the amount so saved, the said flat was purchased. In any case, the stand of the wife that the flat was to be purchased from foreign currency account to avoid Income Tax queries and hassles just cannot be accepted. If at all the Income Tax authorities were to investigate about the purchase of the flat, No. concession would have been offered by the Income Tax department to the husband on the ground that the flat was purchased in foreign currency. If at all the Income Tax department would have questioned the transaction relating to the said flat, they would have considered all aspects of the matter and attended to it. It is in these circumstances, we are not inclined to accept the stand of the wife that she facilitated the husband to save the sum of Rs. 2,16,000/-in the NRE Account and that is how she contributed for the purchase of the said flat. In this connection, we would also like to place on record that certain amount of money lying in the NRE account was transferred by the wife to various fixed deposits. This will also show that the husband had sufficient funds lying in the said NRE Account and the said fact was noted by the wife and that is how she managed the funds of the husband in NRE Account and paid the consideration to the Developer to the tune of Rs. 3,23,375/-from the said NRE Account. The record shows that the entire amount of consideration, as per the Agreement to Sale dated 25.6.1985 at Exhibit 82 was paid from and out of the funds earned by the husband. To that extent, the stand of the wife that she had contributed to the extent of Rs. 2,16,000/- is required to be rejected.

90. It has been the case of the husband that upto June 1985 the husband has been sending monies with some persons or that the wife was borrowing monies from certain persons in India and the husband used to repay those monies in Saudi Arabia. This stand has been taken in order to show that upto June 1985 the husband was contributing towards maintenance of the wife and two daughters. We are not inclined to accept this submission as there is No. evidence placed before the Court in that behalf. In support of this stand, it was necessary for the husband to place on record evidence of those persons who paid monies in India to wife. The husband has not examined those persons from whom the wife had borrowed monies.

To that extent the stand of the husband is required to be rejected.

91. The wife has contended that the total cost of the flat was Rs., 6,61,675/-and that she had contributed to purchase the said flat, on various counts to the extent of Rs. 5,03,000/-. According to wife, taking into consideration the aforesaid figures, a sum of Rs. 1,58,675/-remained balance. According to her, she had rightful share to the extent of 50% in this amount because this amount was earned by the husband from the job in Saudi Arabia. According to wife she

had struggled to get the job for her husband and maintain it for 9 years and, in the absence of her efforts the husband would not have earned amount of Rs. 1,58,675/-. So far as this stand is concerned, we propose to deal with this stand at the time when we would test the case of the wife where she has claimed a sum of Rs. 43 lakhs as set out in the particulars of claim, item No. 4, namely 50% of the share of the accumulated wealth earned by the husband by working in Saudi Arabia, upto February 1992.

92. It has been the stand of the wife that pay order for Rs. 3,23,375/-was paid by drawing the said pay order from her account. One will not be able to dispute this fact. That however does not mean that the consideration set out in agreement dated 26.6.1985 at Exhibit 82 viz. Rs. 3,23,375/-was paid by wife. We have already indicated that the sum of Rs. 3,85,000/-was advanced to the Developer by way of loan. The record shows that the said amount was paid from the NRE Account No. 253 of husband. The wife has admitted that the Developer handed over to her a cheque drawn in favour of the husband to the tune of Rs. 3,85,000/-so as to square off the loan transaction. It is clear that the said amount of Rs. 3,85,000/-was to be used for paying the consideration reflected in the Agreement to Sale. The wife has admitted that she had an account with Syndicate Bank, Matunga Branch, Mumbai being Account No. 24387 standing in her name alone. She has admitted that Mr. Kamat, Manager of the Bank, added husband''s name as joint holder and the said cheque of Rs. 3,85,000/-was deposited in the said account and after realisation of the said cheque, the Pay Order to the tune of Rs. 3,23,375/-was obtained in the name of the Developer and was paid to the Developer on or about 26.6.1985 i.e. the day when the possession of the flat was taken. The wife has mentioned the aforesaid transaction in her letter dated 29.6.1985 at Exhibit 73. All this will clearly go to show that the monies from NRE Account were entrusted to the Builder in the beginning as and by way of loan, the said amount was repaid by the Builder in Indian Currency and the said cheque was deposited in the joint account by the wife and the consideration of Rs. 3,23,375/-as per the agreement dated 26.6.1985 was paid to the Builder. All this will clearly go to show that the consideration for the said flat as mentioned in the Agreement to Sale came from the monies which were lying in the said NRE Account. It is common ground that the monies in the said NRE Account were the one which were remitted by the husband from Saudi Arabia out of his earnings in Saudi Arabia. The sum of Rs. 3,37,000/-was raised by surrendering the rights in the tenanted flat which rights were once held by the husband and his brother. This will show that the sum of Rs. 3,37,000/-paid in cash (not to be accounted for) was also paid by the husband. The wife has admitted in letter dated 29.6.1985 Exhibit 73 that she had paid a sum of Rs. 1,300/-to the Developer from and out of the amount of Rs. 5000/-which she had withdrawn from her account, where the cheque for Rs. 3,85,000/-was deposited. This will also go to show that even the small sum of Rs. 1,300/-was paid from and out of the earnings of the husband.

93. In the circumstances mentioned aforesaid, we hold that the wife has not

contributed towards purchase of the said flat and consequently, the claim of the wife that she has a share in the said flat cannot be accepted. We have gone through the impugned judgment dated 1st June, 2009 and for the aforesaid reasons we are inclined to hold that the order passed by the learned Judge in terms of the impugned judgment dated 1st June, 2009 so as to declare the husband as the absolute owner of the said flat need not be interfered.

94. From the arguments which are advanced across the bar, we take it that it has been the case of the wife that because her name appears in the Agreement to Sale, and because her name appears in the Share Certificate issued by the Co-operative Society, in the name of the husband and wife jointly, she has a share in the said flat. We propose to discuss this aspect of the matter hereafter.

95. On the basis of the evidence given by the wife as well as by the husband, it is clear that the husband could not have waited to complete the transaction in regard to the execution of the Agreement to Sale, beyond 31st March, 1985 consequently the husband was absent on or about 26.6.1985 when the transaction took place. The husband has given evidence that the Agreement to Sale, duly prepared with the relevant portion including the name of the purchaser was made available to the husband and the husband had signed the said document and handed over the same to the wife. According to the husband, the wife added her name as purchaser alongwith the husband and tendered her signature. This evidence is not seriously challenged by the wife while conducting cross examination of the husband, however, the wife has disputed this contention of the husband, and according to the wife her name was sought to be incorporated at the instance of the builder. She has mentioned this in her letter dated 7th March, 1989 at Exhibit 90. The relevant words are "Even for this flat I never told them to put my name. They did it themselves.". Surely, the reference to the word "they" is to the Developers. This will negative the case of the wife that the flat was intended to be purchased jointly in the name of husband and wife. If it was so agreed between husband and wife that the flat was to be purchased jointly in the name of husband and wife, the wife would not have admitted that her name was inserted in the flat at the instance of the Developer.

96. It is seen that the Share Certificate No. 15 dated 18th October, 1988 came to be issued jointly in the name of the husband and wife. It is the stand of the husband that the name of the wife was added in the said Share Certificate by fraudulent means and without his consent and knowledge. As against this, the wife has given evidence as to the circumstance in which the Share Certificate came to be issued. The wife has stated that in the year 1986 the Society concerning Milton Apartment was decided to be registered. She has signed on the Original Application Form being No. 12161, being the application for membership along with Share Certificate Data Slip, as she was asked to do so. According to her, she was instructed to fill up the details as per the flat purchase agreement and since the name of the husband stood first in the flat purchase agreement, they instructed her to sign on his behalf. She states that she blindly

followed their instructions without finding out correct position as per law and that is how she explained as to how the Share Certificate No. 15 dated 18th October, 1988 was prepared and issued under the joint names. According to her, as per Section 2 of the Maharashtra Co-operative Societies Act, the person who at the time of joining makes an application for registration of the society and which is subsequently registered is a member. According to her, bye law No. 17 of the Bye Laws of the Co-operative Society stipulates that the signatory to the application for registration of the society was deemed to be member of the society after its registration. On this count she claims that her name was rightly incorporated in the share certificate and that because proxy signature was totally unlawful as per Section 27(1) of the Maharashtra Co-operative Societies Act, the name of the husband ought not to have been incorporated as the share holder. In this connection, it would be convenient to refer to the three documents at Exhibit 100 collectively and thereafter test the case of the wife. On record, we find in all three documents which are at Exhibit 100 collectively. They are as under:

i) Share Certificate Data Slip, shows that the name of the husband as the person from whom said data is sent. It also shows that the membership form and nomination form duly filled in came to be signed by the wife for the husband. The signature on this share certificate data slip is that of the wife.

ii) The next document is application for membership being Application No. 12167. In this application, the name of the husband at serial No. 1 and name of the wife at serial No. 2 appear as the persons who are requesting the society to admit them as members. The other particulars such as age, occupation, office address and the Income are filled in and they pertain to the husband only. The signature on this application is nodoubt of the wife, but it is for the husband. Below the signature, following words are found. Mrs. S. Mudbhatkal for (Dr. A.R. Mudbhatkal).

iii) The third document is Form J, where name of the husband is shown as a member.

Additional document is Form I, Register of Members. Here the name of the husband appears. The other particulars such as occupation, age, are filled in and there the said particulars pertain to the husband. Column No. 8 pertains to nomination and the name of the nominee is Ms. Sonia Mudbhatkal (daughter of husband).

So far as these documents are concerned, the correctness of these documents are not under challenge. If this is the position, the record clearly goes to show that at the time of registration of the society, the necessary particulars were filled in keeping in view the idea that the membership of the said society should stand in the name of the husband alone. If at all it was intended by the husband and wife that the membership of the said society should stand jointly in the name of the husband and wife, the particulars in the various forms as mentioned aforesaid would have indicated accordingly. Except the name of the wife appearing in the application for membership alongwith the husband, there is No. other place where the name of the wife is shown as a member. In fact, on the application for membership also, as mentioned earlier, the wife has signed for the husband. If at all the wife wanted to enroll herself as member, nothing prevented the wife from tendering the signature for herself as a member and also for the husband as member. These forms are undoubtedly filled in, in September 1988 when the husband was not in India. All these forms read together would clearly go to show that it was decided between the husband and wife that the membership of the said society would stand in the name of the husband alone.

97. Mr. G.P.Singh was examined on behalf of the husband in the course of trial of M.J.Petition No. A-1945/1982. Mr. Singh stated in his evidence that on the list of persons to be included as members, names of the husband and wife appear as against the name of the wife the signature of the wife is noted. Whereas against the name of the husband, the signature is not noted. This evidence was sought to be used by the wife in support of her stand that she was entitled to become a member.

98. It has been the stand of the wife that the letter at Exhibit 320 was executed by the husband and wife dated 28th March, 1985, addressed to the Developer and in the said letter there is a reference about the advancement of loan to the developer and the first signature is that of the wife and the second signature is that of the husband. The wife has pressed this letter in service to contend that she has a share in the flat.

99. We have considered the aforesaid material appearing on the record. The record shows that the Share Certificate came to be issued in the joint name of the husband and wife and the name of the husband was at serial No. 1 on the basis of various applications filed by the wife at the time when the husband was out of India. Signatures of wife at appropriate places clearly go to show that at the time when the application was made to the society for registration, the wife herself wanted that the husband should be shown as a member of the said society. There is No. satisfactory explanation coming from the Office bearer of the society as to why the name of the wife came to be incorporated as a member of the said society when the various forms filled in show that the name of the husband was to be mentioned as member. For the aforesaid reasons we are inclined to observe that though the name of the wife appears in the Share Certificate issued by the society, the husband had not accepted the said arrangement. It is required to be mentioned that after the husband came down to Mumbai in the year 1992, he realised that the name of the wife has been added in the Share Certificate and that is how the husband wrote three letters. They are as under:

i) By letter dated 7th March, 1992 at Exhibit 341, the husband informed the society that name of the wife was added as and by way of convenience.

ii) By letter dated 25th April, 1992 at Exhibit 173 the husband informed the society that the wife inserted her name in the flat agreement as well as shares in his absence.

iii) By letter dated 23rd May, 1992 at Exhibit 172 he informed the society that the wife has entered her name in the flat purchase agreement by fraud and without the knowledge or consent of the busband.

All these three letters would clearly go to show that the husband had not authorised the wife to have her name entered in the Agreement to Sale, as also in the Share Certificate. He, therefore, at the earliest opportunity made representation for correction of society''s record. Thus, it is clear that the wife''s name was added in the agreement to sale as well as the Share Certificate without the knowledge and consent of the husband.

100. The question is whether on account of the insertion of the name of the wife in the Agreement to Sale, and Share Certificate, whether the wife can claim that she has a right in respect of the said flat. We have considered this aspect of the matter. We have already observed that the total consideration payable in regard to the said flat has been paid from and out of the NRE Account. Even the sum of Rs. 3,38,000/-paid in cash were arranged by surrendering tenancy rights in respect of the tenanted flat, over which the wife had No. right. To put it differently, the wife has not paid any consideration for purchase of the flat from her earning or savings. That evidence is lacking.

Hence, on the basis of this finding, it will have to be held that merely because the name of the wife stands in the Share Certificate and Flat Purchase Agreement, by itself will not confer any right upon her.

101. The husband has filed Income Tax Returns for the Assessment year 1986-1987. A copy of which is at Exhibit 377. A perusal of the said Income Tax Return goes to show that the husband had placed before the Income Tax Authorities that the flat was owned by him and this aspect is not challenged by the wife. If it was the stand of the wife that she had a share in the flat, she should have filed Income Tax Return disclosing her share in the said flat. No. such income tax return is filed. This is one more reason to hold that the wife has No. right in the in the said flat.

102. Reliance was placed by the wife on letter dated 28th March, 1985 at Exhibit 320 being letter addressed to M/s. Veena Beena Developers, by which the wife and husband had indicated to the Developer that the sum of Rs. 3,85,000/-would be given to him by way of loan. According to the wife, the very fact that her signature appears at serial No. 1 in the said letter, she was privy to the transaction relating to the said flat. Looking to the various developments which took place as regards purchase of the said flat, which are discussed in the earlier part of this judgment, merely because the letter dated 28th March, 1985 was signed by the wife would not give her any right in the said flat.

103. In view of the aforesaid discussion, we hold that the claim of the wife that

she has a share in the said flat, much less 88% share in the said flat cannot be accepted and accordingly the point No. 2 is answered in the negative. The finding recorded by the learned Judge that the husband is the absolute owner of suit flat need not be interfered with. Hence point No. 2 is answered in the negative.

104. The wife, after filing the written statement to the petition No. B-153 of 2008 filed by the husband has put up certain claims in the nature of her counter claim and has prayed for certain reliefs which are set out in the prayers. We now propose to discuss whether such claim made by the wife can be granted. The wife has claimed a sum of Rs. 25 lakhs from the society on the ground that after the husband informed the society that the wife inserted her name in the flat purchase agreement by fraud and without the husband''s knowledge and consent, she was subjected to high handed abusive, insulting and contumacious treatment by Mr. Hansel D. Souza and Mr. G.P.Singh. According to her said members were representing the said society and therefore she has claimed the sum of Rs. 25 lakhs as and by way of compensation for damage, and injury suffered by her from the said society. After having considered the relevant portion of the evidence on this aspect, we are inclined to observe that the wife has not proved her case to support her claim for damages to the tune of Rs. 25,00,000/-or any part thereof. Except the bareword of the wife, there is No. other evidence placed before the Court in support of the claim made by her. In any case, as per prayer (f) of counter claim, she claims compensation from the said society. The relief of such a nature cannot be granted in favour of the wife in the present proceedings as the said society was not and could not have been made a party to the petition before the Family Court.

105. It is pertinent to note that neither Mr. D''Souza nor Mr. Singh, nor the said society is a party to the proceedings. This is one more ground to reject the claim of the wife against the society. In the counter claim filed against the husband, the wife has also claimed a sum of Rs. 10 lakhs on account of damage suffered by her as the husband conspired with Milton Society management. The wife has not adduced evidence in support of this claim. Bare word of the wife is not sufficient to accept the claim that the husband caused damage to wife by conspiring with the office bearers of the society. We hold that the wife has failed to prove her claim and as such same cannot be granted.

106. The wife has alleged that the husband conspired with Saudi Arabian Airlines and arranged to deliver to them confidential documents, personal letters and marital documents to Saudi Arabian Airlines and that the said handing over of the said documents caused tremendous embarassment and injuries to the feelings of the wife. She has claimed compensation in that behalf. Insofar as this aspect is concerned, the wife has not produced any evidence in support of this stand. She has not been able to prove that it is the husband who handed over certain documents as alleged by her to the Saudi Arabian Airlines. She has also not been able to prove that on account of the said handing over of documents she had to suffer embarassment. Accordingly, even this claim of the wife cannot

be granted.

107. It has been the contention of the wife that on account of the specific efforts made by the wife, the husband could secure a job in Ministry of Health of Saudi Arabian Government. It is also her case that because of the efforts made by her, the husband could maintain his clinic posting. The wife has come out with the case that there was understanding between her and the husband that the income earned from the job at Saudi Arabia would be shared by her on 50-50 basis. She has stated in paragraph 15 of the evidence affidavit that as of 31.12.1988 the husband had accumulated wealth of Rs. 60 lakhs in his possession. She has also stated that the said amount has appreciated to Rs. 100 lakhs presently. She has claimed that in lieu of her contribution in getting and maintaining his Saudi job and in view of the said understanding she is entitled to receive 50% share of the said accumulated wealth.

108. In the particulars of claim, so far as this item is concerned, she has claimed sum of Rs. 43 lakhs, whereas in the affidavit at para 15 she has claimed that the amount standing to the credit of the husband as and by way of accumulated wealth is about Rs. 60 lakhs and she has claimed 50% of the said wealth.

109. After having gone through the entire record it is difficult to accept the claim of the wife that there was understanding between the husband and wife that the wife would be entitled to 50% of the salary earned by the husband while he was with the Ministry of Health of Saudi Arabia. The wife has claimed that she was responsible in securing the job and she made strenuous efforts to see that favour able atmosphere is maintained with the superiors of the husband and that she persuaded his superiors to see that he is not relieved from his service. According to the wife, the husband did not have adequate experience in all fields of medicine and because of her efforts and words placed by her with the superiors of the husband, those superiors did favour the husband by retaining him in the place where he could do his job comfortably. In support of this claim, the wife has given evidence and it is found in paragraph 3 and 15 of her examination. In paragraph 3 the wife has named bosses of the husband with whom she maintained good relations to see that the husband is retained in service and he is given a comfortable posting. The names of the bosses are Mr. Abdul Rahim Ageel, Dr. Ibrahim Kasim, Dr. Jamat Ashraf and Dr. Fazlur Rehman. The wife has even gone to the extent of saying that she maintained good relations with the families of these bosses to see that the husband retains his job so that he could earn good salary.

110. We have perused the evidence and considered the submission made by wife. We are not inclined to accept the wife''s claim referred to above. It is noted that the husband did possess necessary qualification to work as a Medical Officer. There is nothing to show that his appointment as Medical Officer was without following normal recruitment procedure. He joined the services in 1983 and continued to work till 1992. Thus, the husband worked with Ministry of Health for about 12 years. Reading of paragraph 13 of the examination in chief, one gets an

impression that the husband was incompetent in discharging of his duties and it is only because of wife''s efforts the husband was retained on pay roll of Ministry of Health. It is difficult to accept the submission made by wife. The oral evidence in paragraph 13 is not supported by any other evidence. The bare word in the behalf cannot be accepted. The wife has not proved that the persons referred to by her as bosses of husband were in fact in a position to shower mercy on the husband merely because the wife intervened. It is difficult to accept that the husband was incompetent to discharge his duties and merely because the wife persuaded the persons named by her, the Ministry of Health tolerated husband and permitted him to work in a responsible job as a Medical Officer.

111. Even if it is accepted that the husband could retain his job on account of efforts made by wife, it could be treated as a personal obligation shown by wife upon husband. On that count, in law, the wife would not be able to claim share in the income of the husband.

112. The wife has claimed 50% share in the income of the husband on the basis of understanding between the wife and husband. Except the bare word, there is No. evidence to support such a demand. The bare word of the wife as mentioned in examination in chief cannot be accepted to grant her claim.

113. In view of the above, we are inclined to reject the claim of the wife as regards the sum of Rs. 43 lakhs referred to at serial No. 4 in the particulars of claim.

114. We must mention that we are conscious of the fact in regard to the various claims for compensation pressed by the wife in the nature of counter claim, the husband has not filed formal written statement to the counter claim/averments made in the written statement, nor conducted proper cross examination to dispute such claiMs. At the same time, we are of the view that merely because certain facts are referred to in the evidence affidavit and certain assertions are made in support of such claims, it would not be proper to accept the claims and grant it. In our view, each of the claim was required to be corroborated by appropriate evidence. The bare word of the wife cannot be accepted. Notably, the said claim of the wife is in the nature of claim for damages. The claim can succeed only if it is pleaded and proved. In the present case the wife has failed to prove her claim for damages. For the reasons mentioned aforesaid, the monetary claim of the wife as set out in the particulars of claim at Exhibit A cannot be granted. For the reasons mentioned above, point No. 3 is answered in the negative.

115. It has been the stand of the wife that in October, 1988 the husband and wife applied for 12 NRI bonds issued by State Bank of India, each of U.S. Dollar 500, totalling to U.S. Dollars 6000/-and that the State Bank of India had issued the said bonds in the joint name of husband and wife. According to wife, in August 1995 when she made enquiries regarding the said bonds, she was informed by the Bank Officer Mr. Prabhu that the Bond Certificates which were in

possession of the wife stood cancelled and bond certificates were re-issued in the sole name of the husband. According to the wife, on 16.4.1996 the said bonds got matured and the husband received U.S. Dollars 13124.28. According to the wife, the State Bank of India arbitrarily committed illegal action and that they should be ordered to pay U.S. Dollars 6562/-. This claim of the wife is refutted by the husband. According to him, name of the wife was added in the nature of nominee. Be that as it may, it is required to be noted that State Bank of India was not a party to the petition No. B-153 of 2008 and the prayer Clause (g) as set out in the prayers is directed against the State Bank of India asking State Bank of India to pay to her, her share of NRI Bonds to the extent of US Dollars 6562 with interest thereof from 16.3.1996. In our view, looking to the facts involved, as also looking to the fact that the State Bank of India is not a party to the Petition No. B-153 of 2008, there was No. question of Family Court passing an order in favour of the wife. The claim of the wife cannot be granted in the present proceedings. Point No. 4 is answered accordingly.

116. The wife has claimed reliefs in terms of prayer Clauses (b), (c) and (d). They relate to the name of the wife/husband appearing in the share certificate and name of the wife and the husband appearing in the flat purchase agreement dated 26.6.1985 at Exhibit 82. In support of the claim, the wife has levelled allegations against the husband, the said society, the office bearers of the said society and the Developer. It is pertinent to note that the said society, the office bearers of the said society and Developer are not parties to the Petition No. B-153 of 2008. Hence, it will not be possible for this Court to entertain those prayers and grant any relief in this proceeding in terms of prayer Clauses (b), (c) and (d). Points No. 5 and 6 are answered accordingly.

117. We have considered prayer (i) asked in the counter claim. We have also gone through the judgments relied upon. The learned Judge of the Family Court has accepted the claim of the husband that he is the absolute owner of the said flat. We have already indicated with detailed reasons that we are not inclined to interfere in the said finding. Reverting to the judgments relied upon by the wife in the case of S.P.Chengalvaraya Naidu v. Jagannath supra, the Apex Court dealt with the case where it was alleged that the Opposite Party had committed fraud on the court by non disclosure of relevant and material documents with a view to obtain advantage to himself. We fail to understand as to how this judgment is of any avail to the wife to butress the relief in terms of Clause (i). Moreso, in view of finding of fact reiterated by us that the husband is the absolute owner of the said flat. So long as the decree of divorce operates, the relationships of parties i.e. husband and wife would be snapped. Thus the wife does not continue to be wife and she has No. ownership right in the said flat, it is not possible to accede to her prayer in terms of prayer (i) against husband who is held to be absolute owner of the said flat. For the same reasons the decision in the case of i) A v. B supra or for that matter Gurasz v. Gurasz Supra will be of No. avail. In the case Jones v. Jones, supra, during the pendency of divorce proceedings the husband installed mistress in the matrimonial home shortly after wife''s departure. In the

present case, after the decree of divorce between the parties, it will not be open to the wife to claim that said flat continues to be her matrimonial home. The fact that she continues to reside in the said flat and the husband having given up his prayer to oust the wife from the suit flat cannot create right in favour of wife to seek relief in terms of prayer Clause (i). As the husband is held to be the absolute owner of the said flat, we hold that the wife is not entitled to relief in terms of prayer Clause (i)..

118. In view of the aforesaid discussion, we hold that the wife has not been able to make out the case in her favour so as to allow the First Appeal No. 148 of 2009.

119. In view of the above, the aforesaid two appeals are disposed off by passing the following order.

ORDER

i) Family Court Appeal No. 131 of 2009 is dismissed with No. order as to costs.

ii) Family Court Appeal No. 148 of 2009 is dismissed with No. order as to costs.