

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6739 OF 2015

M/s.Aditya Associates ... Petitioner

Vs.

1. Shri Sachin Ramesh Mhatre
2. Aditi Sachin Mhatre
3. Jeevantara Co-op. Hsg. Soc. Ltd. ... Respondents

a/w

WRIT PETITION NO.6740 OF 2015

M/s.Aditya Associates ... Petitioner

Vs.

1. Shri Sachin Ramesh Mhatre
2. Smt.Aditi Sachin Mhatre
3. Jeevantara Co-op. Hsg. Soc. Ltd.
4. Shri Mukund Jog, Chairman
Jeevantara Co-op. Hsg. Soc. Ltd.
5. Shri Ramakant Chandrkanat Hate, Secretary
Jeevantara Co-op. Hsg. Soc. Ltd. ... Respondents

a/w

WRIT PETITION NO.1245 OF 2015

Smt.Aditi Sachin Mhatre ... Petitioner

Vs.

Shri Sachin Ramesh Mhatre ... Respondent

a/w
WRIT PETITION NO.5471 OF 2015

Shri Sachin Ramesh Mhatre

... Petitioner

Vs.

1. Smt.Aditi Sachin Mhatre
 2. M/s.Aditya Associates
 3. Jeevantara Co-op. Hsg. Soc. Ltd.
- ... Respondents

Ms.Krupali H. Rajani for Petitioner in WP/1245/2015

Mr.P.G. Lad for Petitioner and for Resp. No.2 in WP/6739/2015 and WP/6740/2015

Mr.A.A. Kumbhakoni, Sr.Advocate with Mr.Pradip Chavan i/b Pradip Chavan & Asso. for the Petitioner in WP/5471/2015

Mr.G.S. Godbole i/b Mr.Sandesh Deshpande for Petitioner in WP/6739/2015 and WP/6740/2015 and for Resp No.2 in WP/5471/2015

Mr.Pradeep Chavan a/w Ms.Ashwin Borade i/b Pradeep Chavan & Asso. For Resp. No.1 in WP/1245/2015, WP/6739/2015 and WP/6740/2015

Mr.H.N. Mahajan for Resp.No.3 in WP/5471/2015, WP/6739/2015 and WP/6740/2015

CORAM: **MRS.MRIDULA BHATKAR, J.**

ORDER RESERVED ON: **NOVEMBER 21, 2015**

ORDER DELIVERED ON: **DECEMBER 2, 2015**

ORDER:

1. Rule. By consent of the parties, Rule made returnable forthwith and heard finally at the stage of admission.

2. Writ Petition Nos.6739 of 2015 and 6740 of 2015 are filed by the Aditya Associates, the Developer, wherein the order dated 27.5.2015 and

the order of status quo dated 16.4.2015 passed by the Family Court are challenged. In Writ Petition No.1245 of 2015, order dated 26.11.2014 and in Writ Petition No.5471 of 2015, order of the Family Court dated 27.5.2015 are challenged. Since all these four writ petitions are connected with the interim orders passed in respect of proprietary right of the parties in one matrimonial proceedings, they are heard and decided together by this common order. One more petition i.e., Writ Petition No.3398 of 2014 is also filed by wife challenging interim order passed in the property issue by the Family Court, is also heard but separately decided.

3. For a clear grasp as to which orders are challenged in these petitions, this table is prepared. B-1/2013 is the original matter filed by the husband pending before the Family Court and orders under challenge are passed on the interim applications as mentioned below in the table:

Writ Petition No.	Exhibit No. and the impugned Order	Gist	Result
WP/3398/2014	Order dated 3.2.2014 passed below Exhibit 6	Application filed by Aditi Mhatre, wife against the husband Sachin Mhatre, for quashing the order dated 3.2.2014 passed below exhibit 6, which was filed by	Partly allowed. Petitioner husband was allowed to give Flat No.903A on rent. Respondent / wife was directed to defreeze the accounts frozen by her and also to enter into supplementary agreement

		the husband	with the Developer in respect of Flat No.25, Jeevantara
WP/6739/2015	Order dated 27.5.2015 below Exhibit 70	Filed by Aditya Associates i.e., respondent No.2 against all the respondents Application filed for restraining the respondents handing over flat No.405 in Jeevantara, New building. Application for appointment of Court Receiver for flat No.405	Application partly allowed. Respondent No.2 / Developer was directed to make available additional area of 400.40 sq.ft. Or give any flat admeasuring 1000 sq.ft. Instead of Flat No.405. Respondent No.1 wife was directed to enter into agreement with respondent No.2 and petitioner was to make additional payment.
WP/6740/2015	Order dated 16.4.2015 below exhibit 64.	Exhibit 64 is filed by the husband restraining the respondent from alienating, creating third party right in the flat under the redeveloped premises Jeevantara	Parties are directed to maintain status quo in respect of flat No.25 till the respondent enters into supplementary agreement.
WP/1245/2015	Order dated 26.11.2014 in Application exhibit 35	Filed by Aditi Mhatre against Sachin Mhatre. Challenge is to the impleading of both Aditya associates and Secretary and Chairman of Jeevantara society	Application was allowed. The Developer and the Chairman/Secretary was directed to be impleaded as parties.
WP/5471/2015	Order dated 27.5.2015 Below exhibit 70	Filed by Sachin Mhatre against all the respondents Application filed for restraining the respondents handing over flat No.405 in	Application partly allowed. Respondent No.2 / Developer was directed to make available additional area of 400.40 sq.ft. Or give any flat admeasuring 1000 sq.ft. Instead of Flat No.405.

		Jeevantara, to anyone without permission.	Respondent No.1 wife was directed to enter into agreement with respondent No.2 and petitioner was to make additional payment.
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4. The original petition before the Family Court i.e., B-01 of 2013 was filed by the husband and in between applications are filed as mentioned above in the table/chart seeking various interim reliefs out of which some reliefs are pertaining to declaration in respect of two flats, namely, flat No.25, Jeevantara, Ravi Compound, Naupada, Thane; so also about flat No.A-903, Ganraj Heights, Kolbad road, near Vikas complex, Thane. Flat No.A903 in Ganraj Heights stands in the joint name of the petitioner/husband and the respondent/wife. The husband wants the name of the minor son Atharva to be substituted with the petitioner as a sole Guardian. Another relief of transfer is sought in respect of shares invested with Reliance company, Ventura Securities and Sharekhan and the petitioner to be allowed to deal with all the shares.

5. The petitioner had filed interim application below exhibit 35 in Petition No.B-1 of 2013 for impleading the Developer Aditya Associates, who are the petitioners in Writ Petition Nos.6739 of 2015 and 6740 of 2015 as party to the proceedings alongwith Jeevantara Cooperative Society at Panchpakhdi, Thane. As per the contentions of the petitioner, though flat No.25 stands in the name of the wife exclusively, the said flat is

purchased out of the income of the petitioner and, therefore, he be declared as the owner of the said flat. The society entered into an agreement dated 25.3.2013 for the development of the said building with Aditya Associates and the flat owners. By the said agreement, it was agreed to give same carpet area of the flat free of cost with 20% additional carpet area at concessional rate. As per the case of the petitioner / husband, flat No.25, which stood in the name Aditi Shete @ Aditi Sachin Mhatre i.e., the wife is having carpet area of 595 sq.ft. so, she is entitled to get an area of 714 sq.ft. and the proposed agreed carpet area, as per the layout, was 1000 sq.ft. However, the respondent/wife did not enter into the agreement with the Developer and she did not accept the additional area at a concessional rate but accepted the area of flat No.702 admeasuring 700 sq.ft. instead of flat No.405, which is of 1000 sq.ft. The petitioner / husband wants that the said flat is to be transferred in the name of their child Atharva and so contended that the Developer and the respondent wife have dishonestly signed the agreement and she has accepted a lesser area causing great financial loss ultimately to the minor's property. He has therefore prayed that both the Developer and the society were to be impleaded as party. Accordingly, the order was passed below exhibit 35 by the family Court on 26.11.2014 by the Principal Judge of the Family Court, Thane, thereby allowing the said application for impleading the society and the Developer as parties to the proceedings.

Thereafter another application was moved at exhibit 64 in the same petition B - 01 of 2013 by the petitioner that the respondent Developer be restrained from selling, alienating or creating third party right in the flat in the redeveloped premises of Jeevantara society restraining the respondent/wife from accepting the lesser flat area than 1000 sq.ft. The learned Judge of the Family Court, Thane by order dated 16.4.2015 directed the parties to maintain status quo in respect of the flat No.25, Jeevantara society till the respondent/wife enters into agreement in respect of the area of the flat of 1000 sq.ft. Another application was filed by the petitioner at exhibit 70 in the said petition seeking injunction against all the respondents i.e., the wife, the Developer and the society from handing over flat No.405 in the newly constructed building to anyone without his permission. The learned Judge of the Family Court by order dated 27.5.2015 allowed that application partly and directed Respondent No.2 – Developer to make available an additional area and other flat admeasuring 1000 sq.ft. instead of 405 sq.ft. area. It also directed Respondent No.1 wife to promptly enter into an agreement with Respondent No.2 Developer and make necessary arrangement. The said orders are under challenge.

6. Mr.Godbole, the learned Counsel appearing for Aditya Associates, the Developer, submitted that by Writ Petition No.6739 of 2015 and 6740 of 2015, the orders of 16.4.2015 and 27.5.2015 passed by the learned

Judge of the Family Court are hereby challenged. The order of 16.4.2015 is of status quo and by the order dated 27.5.2015 Respondents are directed to enter into an agreement with the respondent/wife on their making necessary arrangement in respect of bigger flat. He argued that Respondent No.2 was not given notice before he was impleaded as party. However, he has filed a written statement and jurisdiction of the Family Court is objected. He submitted that the Family Court may decide the proprietary issue between the parties to the marriage but Respondent No.2 is a Developer and a third party who was not concerned with the proceedings between the parties, cannot be involved in these proceedings. He pointed out that the flat No.25 stands in the name of Respondent No.1 who has already given up her right in respect of bigger area and one half of the members of the society have not opted for a bigger area. He has further submitted that some of the members did not opt for the additional 20% area which was given free but in lieu of that 20% extra area, they chose to take money @ Rs.9,000/-. The wife on 4.4.2013 had informed her unwillingness to have the extra area which was offered at concessional rate. The letter was sent before filing of the petition before the Family Court. The acceptance of more area and payment for the same is at volition of the parties and no order of status quo or directing the respondent to enter into a transaction of a bigger flat can be passed by the Court. He pointed out that the development

agreement dated 25.3.2013 was signed by 30 members but the respondent/wife did not sign the same. She entered into a registered agreement for sale of flat No.702 on 24.3.2014 and the said flat was agreed to be allotted to her by the Developer between the parties. The agreement is registered and it was prior to the order of the High Court dated 25.4.2014. He submitted that if at all this fact would have been brought before the High Court, then the order of directing the wife to enter into a supplementary agreement would not have been passed. He further argued that as the High Court has passed an order dated 25.4.2014, the Family Court, inter alia, passed the order dated 27.5.2015, which is under challenge. He submitted that before 24.3.2014, there was agreement dated 17.9.2013 between the Developer and the wife wherein she has expressed that she wants to go for the area of 700 sq.ft. and not more area. He further submitted that when all these orders were passed, the respondent-Developer was not party to the proceedings and therefore these orders cannot be binding on the respondent. The order of status quo was passed when already a registered agreement was in existence with third party. The respondent-developer had entered into a registered agreement of sale in respect of flat No.405 with third party Mr.&Mrs.Bhosale on 16.9.2015. He submitted that once registered agreements are entered into, the Court cannot compel the parties to rewrite the contract. He further pointed out the letter written by the

respondent-developer to the petitioner on 2.5.2014 informing specifically that Aditi has opted for 700 sq.ft. carpet area and has declined to go for additional area of 400 sq.ft. and there is no privity of contract between the respondent No.2 and the petitioner and therefore expressed its inability to entertain any correspondence from the side of the petitioner. The learned Counsel further pointed out clause No.(m) in para 32 of his petition and submitted that the reason for prosecuting the respondent-developer is that the petitioner himself wanted to redevelop the building. However, as he could not, he is unnecessarily harassing the respondent-developer and, therefore, he submitted both the orders dated 16.4.2015 and 27.5.2015 are to be set aside.

7. Mr.Kumbhakoni, the learned Senior Counsel, appearing for the petitioner/husband, submitted that Writ Petition No.5471 of 2015 is filed for quashing of the order dated 27.5.2015 below exhibit 70. So also, he prayed for appointment of Court Receiver in respect of the flat No.405. The learned Senior Counsel gave background of the application under exhibit 70 which was filed by the petitioner husband praying for injunction against all the respondents - wife, the builder and the society against handing over flat No.405 to anyone without permission. The said application was partly allowed and Respondent No.2 Builder was directed to make available additional area of 440 sq.ft in lieu of flat No.405. The submissions of Mr.Kumbhakoni are based on the agreements of the

members of the society and the Builder which took place on 25.3.2013. He submitted that the Respondent No.2 entered into an agreement for development with Jeevantara society on 25.3.2013 wherein it was expressly made clear and agreed in a chart and schedule thereof, that the area of flat No.25 owned by Aditi Shete @ Aditi Sachin Mhatre plus 20% extra carpet area of the said flat is in the new building. He drew my attention to the schedules 2, 3 and 4 wherein the area of the flat No.25 on the ground floor is mentioned as 595 sq.ft. With additional 20% area, it comes to 714 sq.ft. As per the schedule, the proposed carpet area is shown as 1000 sq.ft. He relied on the 4th schedule. The cost of the additional area of 1000 sq.ft. area is considered as Rs.36,03,800/- which is expected price of the additional area and that is to be paid. He further submitted that the second portion of the 4th schedule discloses how much amount the builder is liable to pay if the additional area is not claimed. He submitted that the Builder has deviated from these terms and conditions in the agreement and, therefore, the respondents have rightly been made party before the Court and the respondents have not challenged the said order when they were impleaded as party to the proceedings. The learned Senior Counsel pointed out that on 26.11.2014, the order of impleading the respondent-society and the Builder was passed pursuant to which on 23.12.2014, the respondent Builder appeared. Thus, he was fully aware of the proceedings before the Court and the relief sought by the petitioner.

Despite this, he entered into an agreement of sale with third party one Mr.&Mrs.Bhosale dated 16.9.2015 in respect of flat No.405. He placed heavy reliance on the order passed by the learned Single Judge of this Court dated 25.4.2014 wherein the High Court has taken a note that the respondent/wife was ready to enter into supplementary agreement with Respondent No.2 – builder for additional area in respect of flat No.405. The learned Senior Counsel submitted that if Respondent No.2 wife made a statement, then she should not have violated the order. He further submitted that this order was communicated by the petitioner to the Builder. Despite this knowledge, Respondent No.2 entered into agreement with third party on 16.9.2015. He further argued that the premises of 405 as promised as per the agreement is of 1000 sq.ft. and the area of the flat for which the respondent has entered into an agreement with the Builder of flat No.702 is 700 only. The flat No.25 is basically purchased out of income of the husband exclusively and, therefore, the issue in respect of declaration of the property in the name of the minor child Atharva under the exclusive guardianship of the petitioner is pending before the Family Court. The petitioner wants this flat to be transferred in the name of Atharva. It is entirely in the interest of his minor son and, therefore, the estate which is going to be in the minor's name is to be required to be protected and this being a proprietary issue between the husband and wife affecting the interest of the minor, the petition is filed. However, the

Court has not properly considered this aspect and the order in respect of flat No.405, though the High Court has specifically directed the respondent/wife to enter into supplementary agreements in respect of flat No.405. This cannot be countenanced by the Developer to frustrate this order. Thus, when the respondent Developer entered into the registered agreement with third party in respect of the said flat No.405 which was protected by the Family Court and the High Court towards the interest of the minor child, mischief was committed and the order was deviated jointly by both the respondents. Therefore, the petitions should succeed.

8. Mr.Kumbhakoni, the learned Senior Counsel appearing on behalf of the husband, has further submitted that the son of the petitioner is entitled to get some amount from the Developer/Builder. He relied on the schedules 2, 3 and 4 of the agreement which are at pages 117, 118 and 131 and 132 of his petition. He submitted that the name of the respondent/wife is appearing in the schedule and thereafter the area of her old flat is mentioned as 595 sq.ft. Her entitlement is shown as she is entitled to get free area as 714 sq.ft in lieu of 595 sq.ft. The area at concessional rate was offered at 1000 sq.ft for which she was required to pay Rs.36 lacs to the Developer after the development of the building. However, further schedules and the agreement disclose that she opted for the area of flat of 700 sq.ft. and thus, there was reduction of area of 14 sq.ft. He pointed out that Manoj Joshi, was was also a member of the

society and having equal area of 595 sq.ft. was entitled to the flat of the same area for which the wife is entitled to. He was given 700 sq.ft.carpet area and thus, for remaining 14 sq.ft. he was paid Rs.126,000/- by the Developer and this amount is to be paid by the Developer to the respondent.

9. The learned Counsel Mr.Godbole has denied this claim and submitted that it is the business between the respondent wife and the Developer and he was not a member of the society and has no locus to transact with the developer.

10. Mr.Lad, the learned Counsel appearing for the respondent/wife submitted that the flat No.25 in Jeevantara stands solely in the name of the respondent-wife. The learned Judge of the Family Court has passed the order directing the wife to enter into an agreement for additional area on the presumption that the husband is the absolute owner of the flat which is not true. He submitted that moreover, the wife did not want additional area at the concessional rate because she does not have money to pay for the additional area. The learned Counsel further submitted that the wife is an educated, working lady. She is an MBA and working in Reliance company. She has her own income and investments. Thus, unless the husband proves the fact that flat No.25 is purchased out of his sole contribution, at an interim stage, the Court cannot on the basis

of any assumption pass orders in favour of the husband denying wife's right on the property.

11. In all these Writ Petitions, the issue pertains to the flat in Jeevantara Housing Society Limited. Though it stands solely in the name of the wife, the husband claims that he has paid the entire consideration out of his earnings exclusively. As it is mentioned earlier, the wife is well educated and is gainfully employed. Under such circumstances, a person in whose name the property stands is presumed to be the true owner of the said property unless it is rebutted by adducing sufficient evidence. If the wife would have been a home-maker and had no other source of income, then, upto certain extent, prima facie, the submissions of Mr.Kumbhakoni, the learned Senior Counsel, that the husband has purchased the flat in Jeevantara out of his own income and subject to outcome of the proceedings before the Family Court if it is proved by the husband that nothing was contributed by the wife in purchasing the said flat, then, it is a Benami transaction so it merely stands in the name of the wife could have been accepted. However, it is not the situation in the present case. So the burden that husband has invested the money in the flat from his earnings is entirely on the husband which he can discharge at the time when the petition is finally heard. Thus, it is a matter of evidence and at this interim stage, the submissions in respect of such benami transaction

cannot be appreciated. Moreover, the wife is residing in the said flat alongwith the child and this is the only roof she has of her own. Under the Cooperative Housing Societies law, the person who is a member of the society and in whose name the flat stands, has a legal status to deal with all the transactions in respect of the said flat with the society or with third parties. Therefore, the Developer has rightly contacted the wife and she accepted the redevelopment in lieu of flat No.25 of 595 sq.ft and she was entitled to get the area of 714 sq.ft and she accepted the said offer of flat No.702 though she had a choice to choose flat No.405 having more area of 1000 sq.ft. To use the option for more area, than 714 sq.ft, depends on her financial capacity to pay for additional amount and so also it is a matter of her convenience. The husband cannot impose his choice on his wife, who is living separate from him. Thus, prima facie, no illegality is found in the transaction by the wife with the Developer and so also with the society.

12. The entire tenor of the interim application which was preferred before the Family Court in respect of choosing the flat of a bigger area and compelling the wife to enter into the agreement in respect of flat No.405 was that the husband is doing everything in the interest of the child. The learned Judge of the Family Court has lost sight of the basic fact that the wife / mother has an equal say and has right to consider the financial welfare of a child as per her wishes and ideas of standard of living. In the

present case, the child is fortunate to have a financially affluent father. However, the mother who is drawing a fixed amount of salary and who is spending some amount out of the same for her child is to be given equal weightage in respect of financial management of the assets of the funds which are to be invested for the child, especially in respect of property which is exclusively owned by her, which may be movable or immovable. The father cannot be allowed to interfere in the management of her own property. The father may be having good ideas of investments which may fetch more value to the property of the mother, yet, the Court should not pass the order which is contrary to the mother's right to have absolute choice of investment. First and foremost, the father has to establish his right over the impugned flat which is open as the matter is yet to be finally decided. Under such circumstances, Writ Petition Nos.6739 of 2015 and 6740 of 2015 are to be allowed.

WRIT PETITION NO.5471 OF 2015: -

13. Writ Petition No.5471 of 2015 is filed by the respondent/husband praying that the order dated 27.5.2015 in Marriage Petition No.B-1/2013 passed by the learned Judge, Family Court, Thane below exhibit 70 be quashed and set aside. The said application was filed by the respondent/husband under sections 94, 151, Order 39 Rules 1 and 2 of the Code of Civil Procedure for restraining the respondent/wife from

handing over flat No.405 in the newly constructed building to anyone without permission. The issue involved in this petition is similar to Writ Petition Nos.6739 of 2015 and 6740 of 2015 which is discussed above. It is mentioned that respondent/wife on her own has waived the extra space and accepted the 700 sq.ft. flat by agreement dated 17.9.2013. The order of the High Court is passed directing the respondent/wife to enter into agreement for the additional area with the respondent/Developer and it appears that the flat No.405 which was claimed by the husband in lieu of the old flat No.25 was already sold to one Mr. and Mrs.Bhosale and third party interest has already been created by the respondent for which the respondent cannot be blamed as he was never a party to the proceedings before this Court.

14. It is an admitted position that the Developer had entered into an agreement with the society and the members of the society in respect of the development of the building and their respective flats. He offered 20% extra area free of cost to each member and also offered 20% additional area at concessional price, if anybody wanted. It is made clear in the agreement that the builder is under obligation to provide 20% extra area to the flat owner/member, however, it is not compulsory for the member to accept the same. A Member can use his option and may stick to to the FSI of the old flat and may accept money from the Developer for waiving

off the 20% area. Thus, the Member can sell the 20% portion to the Developer. In the present case, the wife opted for 20% free of cost area, resulting increase in the FSI which comes to total area of 700 sq.ft. However, she chose not to buy more area, which is offered at concessional rate by the builder. The Developer or the society are bound to transact with the member only and not any other person as the member has a legal identity. So long as the wife is a Member of the society, the Developer need not deal with husband and objections in respect of the said flat.

15. It is submitted by Mr.Kumbhakoni, the learned Senior Counsel that in lieu of flat No.25 admeasuring 595 sq.ft., the aggregate area to be allotted was 714 sq.ft. However, the flat 702 is of 700 sq.ft. Thus, 14 sq.ft. are less. Considering the agreements between the Developer, Society and Aditi Mhatre, the submissions of the learned Counsel about the entitlement of 714 sq.ft. is correct. However, it is a matter of factual calculation and matter of evidence establishing these facts. The parties are also before the Family Court and, therefore, no specific order can be passed at this stage, but it is expressed that if the father is in a position to establish that the impugned flat was out of his income only, then, he is to be compensated monetarily to the extent of 14 sq.ft. at the market value as on today. It is entirely the matter within the decision and discretion of

the learned Judge of the Family Court who is going to decide the matter finally.

WRIT PETITION NO.1245 OF 2015

16. Writ Petition No.1245 of 2015 is filed by Aditi Sachin Mhatre challenging the order dated 26.11.2014 passed by the learned Judge of the Family Court, Thane in Marriage Petition No.B-1/2013 whereby the application of the petitioner/husband for impleading M/s.Aditya Associates and the Chairman/Secretary of Jeevantara Society as parties to the present proceedings was allowed. The learned Counsel Ms.Rajani appearing in this petition for the petitioner submitted that by order dated 25.4.2014 in Writ Petition No.3398 of 2014, this Court had directed the wife to enter into supplementary agreement. Thereafter, the wife approached the Developer M/s.Aditya Associates for entering into a supplementary agreement by sending an SMS and a letter dated 12.6.2014, however the Developer refused to execute any supplementary agreement of such additional area. She further submitted that the order passed by the learned judge impleading the third party in this petition is not correct. The High Court by its order dated 25.4.2014 has directed the wife to enter into supplementary agreement with the Developer, which is not binding on the Developer.

Mr.Chavan, the learned Counsel for the husband, while opposing this petition, has submitted that a statement was made before this Court in Writ Petition No.3398 of 2014 on 25.4.2014 by the petitioner/wife that she will enter into an agreement for additional area and thereafter she did not follow her statement and the Developer did not cooperate with her and therefore, the Society and the Developer are the necessary parties to the proceedings.

Thus he submitted that in this Writ Petition No.1245 of 2015, he seeks that the order passed by the learned Judge of the Family Court to implead the society and the Developer is legal and that need not be set aside.

The petition before the Family Court pertains to a matrimonial dispute between the parties. Under section 7A of the Family Court, the Family Court has jurisdiction to try and entertain proprietary issues between the parties to the marriage. In the present petition, when the parties are fighting for their proprietary rights, considering the facts in this case, whether third party can be impleaded in such proceedings is an issue in this petition. The learned Judge of the Family Court by her order dated 3.2.2014 directed the petitioner/wife to enter into a supplementary agreement with the Developer in respect of Flat No.25, Jeevantara, Ravi Compound, Naupada, Thane. There is no privity of contract between the

Developer or the Jeevantara society and the husband. Moreover, neither Jeevantara society nor the Developers M/s.Aditya Associates were party to the proceedings when the order dated 3.2.2014 and the order dated 25.4.2014 were passed. It is to be noted that this Court has passed the order on the basis of the statement made by the petitioner/wife and it appears from the submissions on behalf of the petitioner/wife that she tried to communicate this order to the Developer. However, neither her statement nor the order is binding on a third person who was not a party to the proceedings. It is also to be noted that the respondent/husband has filled up a tender for redevelopment of the Jeevantara society which shows that he had other interest in the property and, therefore, possibility of he intending Jeevantara society and M/s.Aditya Associates to be roped into legal proceedings cannot be overruled. It is to be noted that alongwith this petition, writ petition Nos.6739 and 6740 of 2015 are also heard and Mr.Godbole, the learned Counsel has submitted that pursuant to this order, the Developer and the Society have both appeared in the main petition and they have filed their written statement wherein they have raised objection as to why such application was made and why they were made party to the proceedings. He also submitted that the Developer and the society who are impleaded to the proceedings, they were not given proper opportunity of audience before they were impleaded to the proceedings. He submitted that the said issue is open before the learned

Judge of the Family Court. In view of these submissions and as the said order is not challenged in writ petition by the impleaded parties before this Court, the Family Court may consider the objections raised by these parties.

In view of this, no further order is required in this Writ Petition i.e., Writ Petition No.1245 of 2015 and it is hereby disposed of with a direction to the Family Court to decide the objections raised by the parties.

17. In these circumstances, Rule is made absolute in Writ Petition Nos.6739 of 2015 and 6740 of 2015. The orders passed by the learned Judge of the Family Court dated 27.5.2014 and 16.4.2015 are hereby quashed and set aside. Writ Petition Nos.5471 of 2015 is dismissed. Writ Petition No.1245 of 2015 is disposed of in view of the reasons mentioned above.

18. I specifically note that the parties have a minor son Atharva, who is nearly 6 years old. Though the parties are fighting for property, the child needs to be looked after properly and the disputes between the parties are pending from trial Court to Supreme Court. Considering the status of the parties, the husband enjoys a much more sound financial position so he can afford to spend money on litigations. The parties should not waste their time by raising trivial issues before the Court and not to pamper their ego but it is necessary for them to get the main matter decided at the

earliest. It is in the interest of the child. I therefore direct the Family Court to proceed with the matter and it is to be concluded on or before 30.4.2016.

(MRS.MRIDULA BHATKAR, J.)

Request is made by Mr.Kumbhakoni, the learned Senior Counsel, that the order of not handing over possession of flat No.45 to third party which is operating till today, be continued.

In view of the reasons mentioned above and as Writ Petition Nos.6739 of 2015 and 6740 of 2015 are allowed and Writ Petition No.5471 of 2015 is dismissed, I do not intend to continue the order of injunction.

(MRS.MRIDULA BHATKAR, J.)