

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 313 OF 2014
IN
SUIT NO. 175 OF 2014

Sheikhah Fadiyah Saad Al-Abdullah Al-Sabah

..Applicant/Org. Plaintiff

Vs.

1. Sanjay Mishrimal Punamiya

2. Amish Amir Shaikh

3. Mahesh Rupnarayan Soni

..Defendants

MR. HARESH JAGTIANI, SENIOR COUNSEL A/W YASHPAL JAIN, SUPRABH JAIN, BHUMIKA CHULANI & JAHNAVI VORA I/B. YASHPAL JAIN, FOR THE APPLICANT.

DR. BIRENDRA SARAF, SENIOR COUNSEL A/W ABHAY JADEJA, JAY ZAVERI & APURVA THIPSEY I/B. CRAWFORD BAYLEY & CO. FOR DEFENDANT No.1.

MR. CYRUS ARDESHIR A/W L. C. TOLAT FOR DEFENDANT No.2.

MR. FIROZ BHARUCHA A/W HEENAL DESAI I/B. THE LAW POINT FOR DEFENDANT No.3.

CORAM:- B. P. COLABA WALLA, J.

**Reserved on :- August 30, 2022.
Pronounced on :- November 18, 2022**

JUDGEMENT:

1. The above Notice of Motion was heard by me extensively after which arguments were concluded on 30th August 2022 and judgment was reserved. The respective contesting parties were also directed to file their brief written submissions within a period of three weeks from 30th August 2022. Accordingly, the Plaintiff filed her written submissions on 20th September 2022; Defendant No.1 filed his written submissions on 6th October 2022; Defendant No.2 filed his written submissions on 11th October 2022; and Defendant No. 3 filed his written submissions on 10th October 2022, respectively. After considering their written submissions as well as their oral arguments, I have pronounced the judgment today.

2. The above Suit is filed by the Plaintiff to declare that the Defendants or any of them are trespassers and have no right of any nature whatsoever in the premises being (i) Flat No. 21 admeasuring approximately 7000 sq.ft, situated on the 5th Floor (for short “**Flat No.21**”); (ii) the office/room on the ground floor admeasuring approximately 270 sq.ft. next to Flat No.1 (for short “**the Ground Floor Premises**”); (iii) the room on the 6th floor admeasuring approximately 300 sq.ft. [adjacent to the terrace] (for short “**the Sixth Floor Premises**”); and (iv) a parking garage on the ground floor admeasuring approximately 225 sq ft. (for short “**the Parking Garage**”); of the building called “**Al-Sabah Court**” situated at 73/105, Marine Drive, Mumbai-400 020. A further declaration is sought that (i) the Tenancy Agreement dated 30th October 2012 entered into with Defendant No.1 and the rent receipt dated 30th October 2012 (with reference to *Flat No.21*); and (ii) two further Tenancy Agreements, both dated 31st January 2013 (with reference to *the Ground Floor Premises* and *the Sixth Floor Premises*), entered into with Defendant Nos. 2 and 3 respectively, are forged and fabricated and do not bind the Plaintiff. The other consequential relief sought in the Plaintiff is that the Defendants jointly and severally be ordered to hand over quiet, vacant, and peaceful possession of *Flat No. 21; the Ground Floor Premises; the Sixth Floor Premises*; and

the Parking Garage; to the Plaintiff, or her Assignees/Constituted Attorney.

3. In the above Suit, the Plaintiff has filed the above Notice of Motion seeking the relief of the appointment of a Court Receiver under Order XL Rule 1 of the Civil Procedure Code, 1908 (for short the “**CPC**”), the appointment of a Commissioner under Order XXVI of the CPC and a temporary injunction. A relief is also sought that the Defendants jointly and severally be ordered to pay to the Plaintiff mesne profits in the amount of Rs. 35,00,000/- per month for unlawful occupation of the premises described hereinabove.

4. In this Notice of Motion, an *ad-interim* order dated 7th May 2014 was passed whereby, pending the hearing and final disposal of this Notice of Motion, the Defendants were directed not to sell, alienate, transfer, encumber and/or create any third-party rights in *Flat No. 21; the Ground Floor Premises; and the Sixth Floor Premises* in the building called “*Al-Sabah Court*”. I have now heard the Notice of Motion finally.

THE PLEADED CASE OF THE PLAINTIFF:

5. To understand the controversy between the parties and the reliefs claimed, one has to examine the case with which the Plaintiff has

approached this Court. The Plaintiff is the elder daughter of the late His Highness **Sheikh Saad Al-Abdullah Al-Salem Al-Sabah** (for short **“Sheikh Saad”**), who was the Prime Minister of Kuwait and then went on to become the Ultimate Head of the State of Kuwait, which position is honoured as the **“Emir”** of the State of Kuwait. The said late *Sheikh Saad* expired on 13th May 2008. After the demise of *Sheikh Saad*, the Plaintiff, her mother, and her siblings have obtained heirship/succession certificates in respect of the estate of the late *Sheikh Saad*. The Plaintiff along with her mother and her siblings are now the Royal Family of Kuwait and she holds a valid power/authority from the legal heirs to manage the affairs in respect of the estate of the deceased *Sheikh Saad* as well as for initiating various proceedings to protect his estate.

6. In the plaint it is pleaded that Defendant No.1 (Mr. Sanjay Mishrimal Punamiya) is a tenant in respect of Flat No.3 on the 1st floor of the building *Al-Sabah Court* and has forcefully and illegally taken possession of *Flat No. 21* [on the 5th Floor], admeasuring approximately 7000 sq.ft. alongwith *the Parking Garage*. It is further pleaded that Defendant No.2, in connivance with Defendant No.1, has illegally and forcibly taken possession of *the Ground Floor Premises* [admeasuring approximately 270 sq.ft.] and Defendant No.3, in connivance with Defendant No.1, has illegally and forcibly taken possession of *the Sixth*

Floor Premises [admeasuring approximately 300 sq.ft]. All these premises together are referred to as “**the suit premises**” in the Plaintiff and more particularly described in **Exhibit-A** thereto.

7. The facts as pleaded in the Plaintiff reveal that the building *Al-Sabah Court* is owned by the Ruler/Royal Family of Kuwait and some units/flats in the said building are tenanted and the Royal Family of Kuwait is the landlord of these units/flats. The said building was taken on a long-term lease in the year 1955 by the late Emir of Kuwait, namely, **Sheikh Abdullah Al-Salem Al-Sabah** (for short “**Sheikh Abdullah**”). The said *Sheikh Abdullah* expired on 24th November 1965. Vide a Succession Certificate bearing No. 273 dated 1st May 1966, *Sheikh Saad* got the Inheritance Certificate. After the demise of *Sheikh Saad* on 13th May 2008, the present heirs have got their succession certificate from the State of Kuwait, Ministry of Justice Legal Authentication Inheritance Division, vide Succession Certification No. 770/2008.

8. It is the case of the Plaintiff that during the lifetime of the late *Sheikh Saad*, the building was taken care of by one **Faisal Essa Alyousuf Al-Essa** (for short “**Faisal Essa**”) and who was authorized in that regard by the late *Sheikh Saad*. After the demise of *Sheikh Saad*, his legal heirs including the Plaintiff, granted the necessary and specific

authority to *Faisal Essa* to take care of their properties including the building *Al-Sabah Court*. According to the Plaintiff this authority was given to *Faisal Essa* because he lived most of his life in Mumbai, India being the Counsel General of Kuwait. In the plaint it is stated that *Faisal Essa* was honoured with the position of Dean of all the Foreign Counsels Corps in Mumbai and in his capacity as a Kuwaiti Diplomat. The said *Faisal Essa* always strived for high levels of exchange between India and Kuwait. According to the Plaintiff, the building *Al-Sabah Court* holds a historic sentimental value for the Royal Family of Kuwait. According to the Plaintiff this entire building is occupied by tenants except for *Flat No.21; the Ground Floor Premises; the Sixth Floor Premises; and the Parking Garage*, which were owned, occupied, possessed, and fully seized of by the late *Sheikh Saad* [through *Faisal Essa*] and after his demise, by his legal heirs including the Plaintiff.

9. It is the Plaintiff's case that *Flat No.21; the Ground Floor Premises; the Sixth Floor Premises; and the Parking Garage*, were in the absolute use, occupation, possession, and supervision of the said *Faisal Essa* who was the caretaker of the said building. According to the Plaintiff, *Faisal Essa* lived in a flat in a building called "Al-Jabariya" which is within walking distance from the building *Al-Sabah Court*. It is stated in the plaint that *Faisal Essa* was collecting rent from the tenants

of *Al-Sabah Court* and issuing rent receipts to them. Thereafter, in the plaint it is stated that as late as in the last week of April 2013, the said *Faisal Essa* had hosted guests in *Flat No.21*, who can vouch that possession of the said flat was with *Faisal Essa*. According to the Plaintiff this becomes significant because according to Defendant No.1, he became the tenant of *Flat No.21* in by virtue of a Tenancy Agreement dated 30th October 2012 executed between himself and the said *Faisal Essa*.

10. Similarly, it is the Plaintiff's case that the *Sixth Floor Premises* [adjacent to the terrace] belongs to the Royal Family and holds all important documents and the records including official Government documents. It is the further case of the Plaintiff that *Faisal Essa* occupied the *Ground Floor Premises* where his personal important documents, Government Documents and other documents pertaining to the title and tenancies of the building *Al-Sabah Court*, receipt books of the past, and blank receipt books, seals, signature stamps etc. were all in the said *Ground Floor Premises* until he left India for Kuwait on 6th May 2013.

11. In the Plaintiff it is stated that *Faisal Essa* had a kidney transplant in Mumbai at Breach Candy Hospital and was in the said hospital from 18th January 2013 to 16th February 2013. It is also stated that thereafter *Faisal Essa* was recuperating at his residence, until 6th

May 2013, when he left India for Kuwait as he wanted to rest, having undergone a major surgery. It is stated in the Plaintiff that a set of keys of three premises which form the subject matter of the present Suit [namely, *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises*] were at all times entrusted to the staff members who have been described in paragraph 10 of the plaint. It is also stated that since Defendant No.1 is a tenant in respect of Flat No.3 situated on the 1st floor of the building *Al-Sabah Court* and considering that Mr. *Faisal Essa* used to visit the said building on a regular basis, Defendant No.1 had developed a friendship with the servants/staff of *Faisal Essa* who were living in the servants quarters in the said building and who used to always be around *Faisal Essa* when he visited the said building.

12. It is the specific case of the Plaintiff that when *Faisal Essa* left India on 6th May 2013, the Defendants took illegal and forcible possession of *Flat No.21; the Ground Floor Premises; the Sixth Floor Premises; and the Parking Garage*, by winning over the servants/staff of the Plaintiff by paying them substantial sums and bringing pressure upon them to toe their line. It is the case of the Plaintiff that the Plaintiff's servants/staff have given Defendant No.1 access to the office of the Plaintiff with all the blank receipts and seals. It is in connivance with these people that the Defendants have executed their unlawful conspiracy

to illegally oust the Plaintiff from *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises.*

13. According to the Plaintiff, this does not stop here. As a part of this illegal scheme, the Defendants have created forged and fabricated documents to create illegal tenancy rights over *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises* as more particularly set out in the Plaintiff. According to the Plaintiff, Defendant No.1 has forged and fabricated the purported Tenancy Agreement dated 30th October 2012 in respect of *Flat No.21*. Additionally, Defendant No.1, in collusion with Defendant Nos.2 and 3, have similarly forged and fabricated two Tenancy Agreements, both dated 31st January 2013, in respect of *the Ground Floor Premises and the Sixth Floor Premises* respectively. It is important to note that it is the specific case of the Plaintiff that the signatures of *Faisal Essa* on all the three purported Tenancy Agreements are forged, and that *Faisal Essa* has never executed any such Agreements on behalf of the heirs of the late Emir of Kuwait.

14. That apart, and strictly without prejudice, it is stated in the plaint that the late Emir of Kuwait (*Sheikh Saad*) expired on 13th May 2008 and therefore, no Tenancy Agreement could have been executed on his behalf thereafter. According to the Plaintiff this only highlights the

brazen illegality of the Defendants' scheme. In the plaint it is stated that to legitimize the Defendants' illegal actions, on 12th February 2013, Defendant No.1 filed a false and frivolous Complaint under Sections 406, 504, 506(II) of the Indian Penal Code, 1860 (for short the "IPC") read with Sections 3 and 25 of the Arms Act, 1959 in the Court of Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai, against *Faisal Essa*. In the said complaint, it was *inter-alia* stated that Defendant No.1 is a tenant in respect of *Flat No.21* and the said *Faisal Essa* had executed a purported Tenancy Agreement dated 30th October 2012 and issued purported rent receipts in favour of Defendant No.1 in respect of the said *Flat No. 21*. It is averred in the Plaintiff that in the said complaint [filed by Defendant No.1 against *Faisal Essa*], it was stated that after Defendant No.1 started doing repairs in *Flat No.21*, *Faisal Essa* threatened him with dire consequences by allegedly showing him a revolver. The complaint however does not mention any specific date on which the alleged criminal offence was committed. According to the Plaintiff this important fact was specifically omitted because Defendant No.1 was acquainted with *Faisal Essa* and was aware of his medical condition and to commit to a date of the offence would run the risk of the Plaintiff being able to demonstrate that *Faisal Essa* was in hospital on that date. Be that as it may, according to the Plaintiff, Defendant No.1 pursued this false and frivolous complaint and got the learned Magistrate

to issue an order dated 18th February 2013 under Section 156(3) of the Code of Criminal Procedure, 1973 (for short the “**CrPC**”), thereby sending the said complaint for investigation to the Marine Drive Police Station. It is the case of the Plaintiff, that neither the Plaintiff nor *Faisal Essa* were aware of any such complaint/proceedings when *Faisal Essa* left for Kuwait on 6th May 2013.

15. It is the specific case of the Plaintiff that only after *Faisal Essa* left for Kuwait, the Defendants, in connivance with the servants of the Plaintiff, took forcible and illegal possession of *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises*. It is when some of the tenants of the building informed *Faisal Essa* of the same, who in turn informed the Plaintiff, that the Plaintiff learnt that the Defendants had illegally and forcibly taken possession of the premises in question. On the Plaintiff making further inquiries, the Plaintiff was shocked to learn that the Defendants have filed the aforesaid false and frivolous complaint against *Faisal Essa* with the apparent purpose to deter him from returning to India.

16. According to the Plaintiff, on a careful consideration of the forged and fabricated Tenancy Agreement dated 30th October 2012 (entered into with Defendant No.1), the following points are worth

noting, which clearly shows that the said Agreement is forged and fabricated:

- (i) That the purported Tenancy Agreement was executed by *Faisal Essa* as a Constituted Attorney of the late *Sheikh Saad*. However, as on the date of the purported Tenancy Agreement, *Sheikh Saad* had already expired and consequently the Power of Attorney issued by *Sheikh Saad* in favour of *Faisal Essa* had also ceased to be valid. A copy of the Power of Attorney of *Sheikh Saad* in favour of *Faisal Essa* is also not annexed to the purported Tenancy Agreement.
- (ii) The purported Tenancy Agreement dated 30th October 2012 is neither registered nor notarized and that the signature of *Faisal Essa* is forged and fabricated and does not even closely resemble the actual signature of *Faisal Essa* as can be seen from the stamp of the signature of *Faisal Essa*. This is, *inter alia*, established by a report of a handwriting expert dated 4th September 2013.
- (iii) The purported Tenancy Agreement of 30th October 2012, at Clause 7, refers to the 'Landlord' confirming having received from the 'New Tenant' a sum of Rs.50,000/- by cheque as a deposit for payment of monthly standard rent for the tenanted premises. Clause 7 refers to an alleged acknowledgment by the 'Landlord' of the receipt thereof. Along with the purported Tenancy Agreement annexed is the receipt of the said sum of Rs.

50,000/- by cheque No. 385341 drawn on Bombay Mercantile Bank on account of payment of deposit for standard rent, purportedly on the same day the first rent receipt came to be issued in favour of Defendant No.1. This rent receipt is for the period October 2012 to December 2012 for the same amount of Rs. 50,000/-. However, the cheque number referred to is different from the cheque number mentioned in the purported Tenancy Agreement. The cheque number in the purported Rent Receipt is 387345. This is yet another indication of the fraudulent nature of the purported Tenancy Agreement.

(iv) There is no amount of monthly rent mentioned in the purported forged Tenancy Agreement and that there is merely a mention that the tenant would pay standard rent to the landlord, which is never the case in any Tenancy Agreement.

(v) The purported Tenancy Agreement is merely copied from the Tenancy Agreement of Defendant No.1 for Flat No.3 on the 1st Floor where he is already a tenant, which fact can be verified by reading the purported forged Tenancy Agreement wherein the reference to tenant is always used as “new tenant” which was the case in the Tenancy Agreement for flat No.3 wherein the Defendant No.1 is a tenant. In that case there was a change in tenancy and there was an outgoing tenant and Defendant No.1 was coming in as a new tenant and therefore the Defendant was described by the word “new tenant” in the said Agreement.

He has mistakenly retained the same in the purported forged Tenancy Agreement dated 30th October 2012 as well.

17. It is also the case of the Plaintiff that Defendant No.1 has forged not only the Tenancy Agreement dated 30th October 2012 but also forged and fabricated the rent receipt which is annexed to RAN Application No.47 of 2012 filed by him before the Small Causes Court at Mumbai. According to the Plaintiff, this can be verified from the rent receipts which are already issued to other tenants of the said building, a copy of one which is also annexed to the Plaintiff. Thereafter, it is also stated that on the strength of the forged and fabricated Tenancy Agreement and rent receipt, Defendant No.1 also, on 12th December 2012, filed RAN Application No. 47 of 2012 in the Court of Small Causes at Mumbai for fixation of Standard Rent. On learning about this, the Plaintiff on 25th June 2013, through her Advocates, applied for a certified copy of the RAN Application. On perusing a copy of this Application, the Plaintiff learnt that the said Application is fraudulently filed against the *Sheikh Abdullah*, the grandfather of the Plaintiff [who expired in 1965] and Mr. *Faisal Essa*. In the said RAN Application, before the service of the writ of summons on *Sheikh Abdullah* or *Faisal Essa* [the Defendants therein], Defendant No.1 herein [the Applicant in the RAN Application] obtained

an ex-parte order dated 22nd December 2012, whereby the Small Causes Court directed Defendant No.1 herein to deposit a lump sum amount of rent for a further period of three months from January, 2013 to March, 2013 and similarly in the same manner for further next quarterly period, on or before 30th January, 2013. The said order allowed *Sheikh Abdullah* and *Faisal Essa* to withdraw the amount deposited and they were directed not to interfere with the possession of *Flat No. 21* which was in possession/occupation of Defendant No.1 herein. Thereafter, it is also stated in the Plaintiff that the Plaintiff subsequently learnt that Defendant No.1 herein also filed RAD Suit No. 174 of 2013 in the Small Causes Court at Mumbai on 22nd January 2013. The Plaintiff, for the first time got knowledge of the said suit from the Affidavit in reply filed by Defendant No.1 in Criminal Writ Petition No. 2662 of 2013 filed by Mr. *Faisal Essa*.

18. To put it in a nutshell, it is the case of the Plaintiff, that the aforesaid RAN Application as well as the RAD Suit were filed by Defendant No.1 only to somehow legitimize the action that Defendant No.1 proposed to take in the future to illegally dispossess the Plaintiff from *Flat No. 21* and somehow justify and/or legitimize his possession of the said flat. It is the case of the Plaintiff that the same was also done by Defendant Nos. 2 and 3 by filing their independent RAD suits in the Small Causes Court sometime in April 2013. It is on the basis of these pleadings

that the Plaintiff seeks a declaration that the Defendants are trespassers on the premises in their possession/ occupation and for a declaration that the Tenancy Agreements relied upon by them are forged and fabricated and not binding on the Plaintiff. Consequently, a direction is sought against the Defendants to hand over the premises in their respective occupation and possession, to the Plaintiff and/or her Assignees/Constituted Attorney. In aid of this final relief, the above Notice of Motion is filed seeking the appointment of a Court Receiver, injunction and for a direction to the Defendants to pay mesne profits to the Plaintiff.

SUBMISSIONS OF THE PLAINTIFF:

19. In this factual backdrop, Mr. Jagtiani, the learned Senior Counsel appearing on behalf of the plaintiff, submitted that despite it being contended by the Defendants that they were persuaded to enter into their respective Tenancy Agreements with *Faisal Essa* [acting as the Constituted Attorney of *Sheikh Abdullah*], they have failed to produce the Power of Attorney from *Sheikh Abdullah* to *Faisal Essa* because obviously no such document exists. This apart, there is no evidence whatsoever (apart from their bare words) that *Faisal Essa* held himself out to be the representative of *Sheikh Abdullah* who authorized him to enter into the aforesaid Tenancy Agreements. Mr. Jagtiani submitted that

the case of the Plaintiff is confined to the Tenancy Agreements entered into in the year 2012-2013 in respect of *Flat No.21; the Ground Floor Premises*; and *the Sixth Floor Premises* with a dead person, namely, *Sheikh Abdullah*, and hence the circumstances that attach to the creation of the tenancies in the year 2008 of the other flats in the building *Al-Sabah Court* by *Faisal Essa* representing *Sheikh Saad*, can have no bearing or relevance to the present case. According to Mr. Jagtiani, if these three basic features are borne in mind, every single defence must necessarily crumble. Mr. Jagtiani submitted that *Sheikh Abdullah*'s death in November 1965 is established beyond any controversy and this fact alone completely destroys any defence that the Defendants have put forward because according to the Defendants each one of them claims to have met *Sheikh Abdullah* in the year 2012-2013 i.e. 47-48 years after his death. According to Mr. Jagtiani, all the Defendants have committed themselves having met *Sheikh Abdullah* and *Faisal Essa* for entering into the Tenancy Agreements and being put in possession of their respective premises. Mr. Jagtiani submitted that this stand remains unaltered even as on today. This stand is taken by the Defendants in the RAD Suit filed by Defendant No.1 and which suit subsequently reiterates that *Sheikh Abdullah* put Defendant No.1 in possession of *Flat No.21*. According to Mr. Jagtiani, the Defendants and particularly Defendant No.1, have constantly modified their defence after their lies have been exposed by

cogent evidence brought on record by the Plaintiff and which improvised defence is not only contrary and inconsistent with their previous stand but is also self-destructive. After the filing of the present plaint, when it was revealed that *Sheikh Abdullah* had died in November 1965, and that *Faisal Essa* could never have held himself out to be the Constituted Attorney of *Sheikh Abdullah* in the year 2012, Defendant No.1 was driven to reinvent his defence. In the criminal defamation Complaint, (which was brought on record by the Plaintiff during the course of the arguments) Defendant No.1 says that *Faisal Essa* assured that he was in fact the Constituted Attorney of *Sheikh Abdullah* who had issued him a Power of Attorney in the year 1961 coupled with interest because *Sheikh Abdullah* owed *Faisal Essa* Rs. 2,00,000/- which debt remained undischarged till *Sheikh Abdullah*'s death. Thus, a new concocted defence was meted out. Mr. Jagtiani submitted that the Defendants' case is that *Faisal Essa* held himself out to be the Representative of *Sheikh Abdullah* or that he was authorized to represent the Emir of Kuwait, and therefore, was the Landlord for the purpose of creating tenancies. This defence is demonstrably false. Mr. Jagtiani submitted that in support of this stand, Defendant No.1 relies upon the Tenancy Agreements entered into by *Faisal Essa* in the year 2008-2010 with Defendant No.1 and two others in respect of flats other than the flats which are the subject matter of the present suit. According to Mr. Jagtiani, reliance placed on the Tenancy

Agreement entered into in the year 2008 with Defendant No.1 militates against the very case canvassed by the Defendants that *Faisal Essa* held himself out to be *Sheikh Abdullah*'s representative. Defendant No.1 has categorically asserted that *Faisal Essa* acted as the Constituted Attorney of *Sheikh Saad*. *Sheikh Saad* is not *Sheikh Abdullah*, a fact over which there is no confusion in the minds of the Defendants, nor even remotely pleaded or suggested by them. The failure on the part of the Defendants to establish this defence must necessarily be fatal to their pleaded case. Significantly, the said Criminal Defamation Complaint (referred to above) categorically identifies *Sheikh Abdullah* as the principal and *Faisal Essa* as his Constituted Attorney. This stand has to be contrasted with Defendant No.1's subsequent averments that *Faisal Essa* acted as the Constituted Attorney of either *Sheikh Saad* or the Emir of Kuwait or that he was authorized to hold himself out as the Landlord of *Al-Sabah Court*. The stark contrast in these two versions completely demolishes Defendant No.1's defence that *Faisal Essa* held himself out to be a person entitled to create the Tenancy Agreements with the Defendants independently of being the Constituted Attorney of *Sheikh Abdullah*.

20. Mr. Jagtiani submitted that the so-called genuineness of the Tenancy Agreements cannot be divorced or abstracted from the host of suspicious circumstances surrounding them. He submitted that the fact

that the Tenancy Agreements are a patent forgery, is compellingly established by the totality of the circumstances attending the Tenancy Agreements including the manner in which they were executed. The so-called genuineness or otherwise of the said Tenancy Agreements ought not to be examined by treating them as stand-alone documents, divorced, as it were, from the backdrop and manner in which they were created and devised. He submitted that since the decrees obtained by the Defendants from the Small Causes Court at Mumbai being a nullity, as they were obtained against the dead person, must necessarily attach to the Tenancy Agreements as well which are also entered into with the same dead person. Moreover, unlike the previous Tenancy Agreements executed by *Faisal Essa*, the following infirmities in the Tenancy Agreement dated 30th October 2012 [purportedly entered into with Defendant No.1 in relation to *Flat No.21*] are worth noting which conclude that the said Tenancy Agreement is a forged and fabricated document:

- (a) The Tenancy Agreement dated 30th October 2012 was executed by *Faisal Essa* as the Constituted Attorney of *Sheikh Abdullah* when he had already expired as far back as in November 1965;
- (b) Unlike the previous Agreements of 2008, the said Tenancy Agreement dated 30th October 2012 was never

registered;

- (c) That the signature of *Faisal Essa* is forged and fabricated;
- (d) Unlike the previous Agreements of 2008, no amount for monthly rent is mentioned in the 2012 Agreement;
- (e) Although the rent with respect to the Tenancy Agreement of Defendant No.1 is shown to have been received on 19th September 2012/20th September 2012, no rent receipt for the alleged quarterly rent is annexed to the said Tenancy Agreement nor does the Tenancy Agreement refer to the cheque details for the payment of the said quarterly rent;
- (f) Even the receipt for the deposit amount shows payment received on 30th October 2012, whereas the bank statement produced by Defendant No.1 shows payment received on 20th September 2012.

21. Mr. Jagtiani submitted that this apart, there are serious legal infirmities in the various judicial proceedings resorted to by the Defendants resulting in patently illegal judicial orders, processes and

other documents being obtained to justify their occupation of *Flat No.21*; *the Ground Floor Premises*; and *the Sixth Floor Premises*. This must necessarily establish that the Tenancy Agreements purportedly entered into with Defendant Nos.1, 2 & 3 are forged. The orders passed in the RAN Application, the decrees obtained in the RAD suits, the panchanamas drawn up by the Police, the bailiff's report, and the process issued by the Magistrate under Section 156(3) of the Cr.P.C. on a false complaint filed by Defendant No.1 are demonstrably illegal and replete with infirmities.

According to Mr. Jagtiani, the infirmities are as under:

Illegalities/Infirmities in the RAN Order:

(i) An ex-parte Order of injunction is passed in the RAN Application. An application for fixation of standard rent under Section 8 has no provision to authorize the judge sitting in that jurisdiction to pass an order of injunction protecting the interest of the Applicant against the lessor. Such an order in an RAN Application is unheard of.

(ii) The Defendants have misrepresented to this Court by stating that the Order in the RAN Application has been decreed in their favour. However, the Plaintiff has tendered a copy of the last Order dated 21st September 2013, checked online, which states that the RAN Application stands dismissed for want of prosecution.

The Judge failed to notice or deliberately ignored the following illegalities/infirmities in the RAD suit:

- (i) Document/Tenancy Agreement is not registered;
- (ii) Tenancy Agreement does not mention monthly rent;
- (iii) RAD suit mentions consideration which is not mentioned in the Tenancy Agreement;
- (iv) The Ld. Judge could not have passed an order without the POA being produced since the Tenancy Agreement is signed by the Constituted Attorney;
- (v) Tenancy Agreement annexes the rent receipt of *Sheikh Saad* whereas the agreement is entered into with *Sheikh Abdullah*;
- (vi) The original Tenancy Agreement cannot be in the custody of the tenant;
- (vii) Most importantly, in the case of Defendant No.2 and Defendant No.3, a decree is passed before the statutory period of 30 days [to enable the Defendant to file his written statement] has elapsed.

Illegalities/Infirmities in the Bailiff's Report:

- (i) *Faisal Essa*'s address as shown by all the Defendants in the title to the RAD suits is an unidentified office premises on the 6th floor;
- (ii) The address of *Sheikh Abdullah/Faisal Essa* in the cause title of the RAD suits filed by all the three Defendants is a premises occupied by Defendant No.3 as per his Tenancy Agreement since 1st August 2012. The said premises, if in

possession of Defendant No.3, cannot be shown as *Sheikh Abdullah's/Faisal Essa's* address. This factor thus proves that the Bailiff never served *Faisal Essa* and his report is thus faulty. Moreover, Defendant No.1 knowing the correspondence address of *Faisal Essa*, i.e. Vaid Building, the Defendants have dishonestly chosen to show the *Sixth floor premises* for the service of the summons.

(iii) The 1st service report with respect to the service of Defendant No.1's RAD suit states that *Faisal Essa* is no more available on the 6th floor and thus serves the summons and the suit on the ground floor. However, the same bailiff shows service of summons in Defendant No.2 and Defendant No.3's RAD suits on 8th April, 2013 on the 6th floor.

(iv) Contrary to the stand of the bailiff in his report about the service of summons in case of Defendant No.2 and Defendant No.3's RAD suit on the 6th floor, Defendant No.2 on oath states that Defendant No.1 and Defendant No.3 were served on the ground floor premises;

(v) The Bailiff fails to identify *Faisal Essa* except by describing him as an old man which by any standard cannot establish the identity of the person upon whom the service is effected;

(vi) Ordinarily the plaintiff should accompany the bailiff to identify the person on whom the service is being effected which has not been done in the present case;

(vii) Defendant No.1 and Defendant No.2 have in their Affidavits in Reply dated June, 2022 identified premises on the

6th floor and the ground floor respectively, with distinct numbers as office Nos. 601 and 602 on the 6th floor and two rooms on the ground floor, one being room Nos. 1 and 2 and the other being room Nos. 3 and 4. However, the properties are not identified in the plaint and therefore the bailiff report, not identifying the property with specific numbers is defective.

(viii) The subsequent attempt of Defendant No.1 and Defendant No.2 to identify the premises after 8 years of filing of the suit by inventing a plan/map of the 6th floor of *Al-Sabah Court* is of no avail to the Defendants.

(ix) On the contrary, if the premises were identified by numbers, then there was no reason for the Defendants to not mention the same in the cause title of their RAD suits.

(x) Moreover, Defendant No.1 states in the June 2022 Affidavit that the premises on the 6th floor is an office premises, whereas Defendant No.3 claims to have acquired the said premises on the 6th floor as a residential premises for the purpose of residence. None of this is observed/ noticed by the Bailiff in his report.

22. Mr. Jagtiani submitted that to substantiate the case of the Defendants that the Tenancy Agreements are not forged and fabricated, the Defendants have sought to rely upon the statements made to the Police during the course of the investigation carried out by the CID in the criminal complaint filed by *Faisal Essa*. Mr. Jagtiani submitted that

under Section 162 of the Cr.P.C, it is impermissible to rely upon statements made to the Police during the course of investigation, especially without following the rigors of Section 145 of the Indian Evidence Act, 1872. He submitted that even if such statements are looked at, it would be unsafe to place any reliance on them on account of many omissions and deficiencies by the police in such investigations. In this regard, Mr. Jagtiani submitted that the statements made to the police are not evidence unless the same have been proved through the discipline of witness action by the process of examination, cross-examination and re-examination of such witnesses on oath. Even if this Court does refer to these statements and proceedings, then the same must be done with immense circumspection for, otherwise, this Court would unwittingly be exercising its criminal revisional jurisdiction which may not be warranted. Even the statements made to the police can never be treated as proof so as to override, supplement or even modify or embellish other cogent evidence brought on record on oath through affidavits or obtained by a judicial process.

23. Mr. Jagtiani submitted that despite this objection, even the statements made before the police by the many of the tenants of *Al-Sabah Court* clearly confirm that *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises* were in the possession of *Faisal Essa* till 6th May

2013. Mr. Jagtiani submitted that these statements also confirmed that the tenants met *Faisal Essa* in *Flat No.21; the Ground Floor Premises*; and *the Sixth Floor Premises* much after the Defendants claim to be in possession thereof. Mr. Jagtiani submitted that the Defendants have heavily relied upon the Final Investigation Report [**the chargesheet**] to state that no offence of trespass or forgery coupled with criminal conspiracy, was committed by them. Mr. Jagtiani submitted that at the outset, this chargesheet/investigation report does not appear to have all the statements of witnesses and thus no reliance can be placed on selective statements forming part of the investigation report. Mr. Jagtiani submitted that the Defendants have placed heavy reliance only on the report of the handwriting expert, and the Investigation Officer, relying upon the report of the handwriting expert, erred in concluding that *Faisal Essa* had no uniformity in his signature. Mr. Jagtiani submitted that the Investigation Officer, based on this report, makes out a case against *Faisal Essa* that he signed the Tenancy Agreements deliberately in a manner to give the impression that his signatures were forged so that he could, if the need arises, deny his signature. This finding, which reads *Faisal Essa's* intention, is unsubstantiated and perverse on all counts. According to Mr. Jagtiani, the factors to be considered from the handwriting expert's report is that the signature of *Faisal Essa* on the Tenancy Agreements does not match with his original signature and this

factor alone was sufficient for the Investigation Officer to charge the Defendants for forgery of the Agreements instead of attempting to rope in *Faisal Essa* by inventing unsubstantiated conclusions of *Faisal Essa*'s involvement in committing forgery. Mr. Jagtiani submitted that it was after observing the above infirmities that the Magistrate was *prima facie* convinced about the forgery, theft, criminal conspiracy and issued process dated 6th April, 2015. Mr. Jagtiani submitted that the entirety of the investigation by the CID and its conclusion is subsumed in the order passed by the Magistrate issuing process against *Faisal Essa* and the Defendants. In this order, the learned Magistrate finds that the material indicates that a charge inter-alia of forgery, theft and conspiracy are sustainable against the Defendants and *prima facie* finds that a case of cheating under Section 420 of the IPC is made out against *Faisal Essa* and liberty was granted to him to file a protest petition against issue of process and investigation. Mr. Jagtiani submitted that therefore the Final Investigation Report/chargesheet, read with order of the Magistrate, in fact supports the case of the Plaintiff that the Defendants are guilty of committing forgery, theft and conspiracy and in fact does not support the case of the Defendants that the Tenancy Agreements are genuine.

24. Mr. Jagtiani then submitted that pivotal defence of the Defendants in their submissions was that all that is stated in their

affidavits has not been denied or dealt with by the Plaintiff by filing any affidavit in rejoinder. On the other hand, the Defendants want this Court to believe their case on the principle of non-traverse particularly because *Faisal Essa* is not a party to the present suit and he being a dominant feature in this litigation, ought to have filed his own Affidavit to refute the defences jotted out by the Defendants. Mr. Jagtiani submitted that the Plaintiff, in not joining *Faisal Essa* either as a co-plaintiff or as a Defendant, suffers no disadvantage and the Plaintiff is in no way affected by the absence of *Faisal Essa* as a party to the pleadings/proceedings. But, in a manner of speaking, *Faisal Essa*'s version as to what transpired in the present case is brought on record by the Defendants by relying upon *Faisal Essa*'s pleadings and versions as expressed in his criminal Writ Petition and his statement to the police. This for all intent and purposes, as it were, would constitute a rejoinder to the affidavits of the Defendants. In these documents, *Faisal Essa*'s defence *inter-alia* can be seen on the following issues, such as:

- i. *Faisal Essa* denied execution of the Tenancy Agreements and has further denied preparing and giving rent receipts and having received any rent amounts.
- ii. *Faisal Essa* claimed to be in possession himself of the premises [which form the subject matter of the suit] up to 6th May 2013 and also denied receiving

the writ of summons in the RAD suits filed by the Defendants in the Small Causes Court at Mumbai.

25. If one takes all these factors into consideration, Mr. Jagtiani submitted that the Defendants' case of non-traverse is a complete myth and/or an overstatement and does not in any way establish any of the false defences taken by the Defendants. The principle of non-traverse is not absolute, was the submission of Mr. Jagtiani. Mr. Jagtiani submitted that the Defendants, taking complete advantage of the absentee Landlords, have perpetrated acts of forgery and trespass. Moreover, all documents relied upon by the Defendants in support of their defence are inherently dubious, self-destructive, and contradictory. According to Mr. Jagtiani, the Plaintiff's burden of establishing a *prima facie* case has been well and sufficiently satisfied. If the sheen of landlord-tenant relationship [which the Defendants are seeking to set up to justify their illegal occupation of the suit properties] is erased, then the fraud perpetrated by the Defendants automatically unravels. Mr. Jagtiani therefore submitted that the Plaintiff has made out a strong *prima facie* case and established that the Defendants have illegally and forcibly and without the consent of the Plaintiff Landlord trespassed into the premises forming the subject matter of the above suit. In these circumstances, Mr. Jagtiani submitted that this is a fit case where the Court Receiver ought to be appointed and

the Plaintiff be put in possession of *Flat No.21; the Ground Floor Premises*; and *the Sixth Floor Premises* as the agent of the Court Receiver on such terms and conditions as this Court deems fit. Additionally, Mr Jagtiani submitted that the Defendants also be directed to pay mesne profits of Rs. 35 Lakhs per month to the Plaintiff. Mr Jagtiani submitted that looking at the conduct of the Defendants and considering the equities of the case, the *ad-interim* injunction granted by this Court on 7th May 2014 would not be adequate relief.

SUBMISSIONS OF DEFENDANT NO.1:

26. On the other hand, Dr. Saraf, the learned Senior Counsel appearing on behalf of Defendant No.1, submitted that Defendant No.1 is in possession and occupation of *Flat No.21* in the building *Al-Sabah Court* by virtue of a Tenancy Agreement dated 30th October 2012 entered into by *Faisal Essa* (for and on behalf of Landlords) in favour of Defendant No.1. This Tenancy Agreement has been challenged in the above Suit as being forged and fabricated. It is on this basis that the above Suit is filed, and reliefs sought seeking a declaration that the Defendants are trespassers of the premises in their respective occupation and that the Tenancy Agreement dated 30th October, 2012 (entered into with Defendant No.1) and the other two Tenancy Agreements both dated 31st January, 2013 (entered into with Defendant Nos. 2 and 3) are forged and

fabricated and do not bind the Plaintiff. The Plaintiff also seeks a cancellation of certain documents on the basis of which the Defendants claim rights to occupy their respective premises. Dr. Saraf, submitted that Defendant No.1 has filed several affidavits, namely, (i) an affidavit in reply dated 25th July 2014; (ii) an additional affidavit dated 29th July 2015; (iii) an additional affidavit dated 19th August 2017; and (iv) an affidavit dated 17th June 2022, to meet the case of the Plaintiff. He submitted that to none of these affidavits has the Plaintiff chosen to file any affidavit in rejoinder to controvert what is stated therein. Relying on these affidavits, Dr. Saraf submitted that it is the 1st Defendant's case that he had earlier entered into a Tenancy Agreement dated 24th October 2008 with *Faisal Essa* in respect of Flat No. 3 on the 1st Floor of the building *Al-Sabah Court*. The said Agreement was executed by *Faisal Essa* as the Landlord in which, it was asserted that *Sheikh Saad* was the owner of the premises. The rent receipts issued by *Faisal Essa* pertaining to these premises as well as the other rent receipts issued by *Faisal Essa* in respect of other premises in *Al-Sabah Court* bear the signature and stamp of *Faisal Essa*. This clearly indicates that *Faisal Essa* was the Constituted Attorney of the late *Sheikh Saad*. In this regard, he brought to my attention several rent receipts annexed to these affidavits as well as to the Plaintiff and submitted that all these documents are evidently after the death of *Sheikh Saad* and have not been disputed by the Plaintiff.

27. Dr. Saraf then pointed out that even the brother of Defendant No.1, Mr. Sandip Punamiya, entered into a Tenancy Agreement dated 1st April 2009 in respect of Flat No. 20 on the 5th Floor of the building *Al-Sabah Court*. This Tenancy Agreement is also similar to the Tenancy Agreement entered into with Defendant No. 1 dated 24th October 2008 in respect of Flat No.3, on the 1st Floor. Dr. Saraf submitted that even this Agreement [dated 1st April 2009] was executed after the death of *Sheikh Saad* by *Faisal Essa* and which has not been disputed by the Plaintiff. Dr. Saraf pointed out that this does not stop here. Other persons in the building *Al-Sabah Court* also acquired premises after the death of *Sheikh Saad* under various Tenancy Agreements which were executed by *Faisal Essa* on the basis that he is the Power of Attorney Holder of *Sheikh Saad*, and the Plaintiff has not disputed any of the aforesaid Tenancy Agreements. One such example is an Agreement dated 16th February 2010 executed between *Faisal Essa* and one Mr. Pradeep Bhansal for Flat No. 13 on the 2nd Floor of the same building. Looking at this conduct of *Faisal Essa* and the Plaintiff, Dr Saraf submitted that it is clear that the Plaintiff allowed *Faisal Essa* to continue to create tenancies in the building *Al-Sabah Court* even after the death of *Sheikh Saad*.

28. Dr. Saraf submitted that since Defendant No.1 required

further premises, he discussed his need with *Faisal Essa* who pointed out that *Flat No.21* was lying locked for a number of years and could be given on a tenancy basis. *Faisal Essa* therefore agreed to give to the 1st Defendant, on a tenancy basis, *Flat No.21* along with the *Parking Garage* admeasuring 225 sq.ft. (approx). Defendant No.1 accordingly gave two cheques bearing Nos. 387325 and 385341 both dated 19th September 2012 which were encashed by Faisal on 20th September 2012. After this, the Tenancy Agreement was executed between *Faisal Essa* and Defendant No.1 on 30th October 2012. Upon execution of the Tenancy Agreement, the keys of *Flat No. 21* were also handed over by *Faisal Essa* to Defendant No.1. Dr Saraf submitted that it was the obligation of *Faisal Essa* to register the said Tenancy Agreement, who kept avoiding and postponing the same. Thereafter he unreasonably called upon Defendant No.1 to vacate *Flat No.21* which led to disputes between the parties.

29. Dr. Saraf submitted that it is the specific case of Defendant No.1 that *Faisal Essa* stated that he would not accept rent in future and demanded more monies from Defendant No.1 compelling him to file RAN Application No.47 of 2012 seeking fixation of standard rent and protection of his rights. In this RAN Application, an order dated 22nd December 2012 was passed directing further monies payable towards rent to be deposited in court and restraining *Faisal Essa* from disturbing

the possession of Defendant No.1. He submitted that what is very important to note is that in the RAN Application [filed by Defendant No.1 in December 2012], the Tenancy Agreement and the rent receipt [in relation to *Flat No.21*] were annexed. Dr Saraf submitted that this fact will have a significant bearing on the outcome of the present matter, especially on the issue of alleged forgery of the rent receipt.

30. Dr. Saraf submitted that be that as it may, Defendant No.1 also filed RAD Suit No. 174 of 2013 for declaration of his tenancy rights. Dr. Saraf submitted that the summons in the said Suit were duly served on 20th February 2013, but *Faisal Essa* did not appear before the Small Causes Court leading to an order being passed on 20th April 2013 to proceed ex-parte. Apart from filing the RAD Suit, Defendant No.1 also filed a Criminal Complaint in the Magistrate's Court regarding certain threats given by *Faisal Essa* to Defendant No.1 and which led to an issuance of an order under Section 156(3) of the Cr.P.C., on 18th February 2013. Based on this order, an FIR also came to be lodged on 4th March 2013. During the investigation, a panchnama was prepared on 24th March 2013 by the authorities which reflects that Defendant No.1 is in possession of *Flat No.21*. Dr. Saraf submitted that this panchnama clearly indicates that the Plaintiff has approached this Court with a false case because it is the Plaintiff's case that *Faisal Essa* was in possession of *Flat*

No.21 till 6th May 2013 (when he left for Kuwait), whereas the said panchnama clearly indicates that Defendant No.1 was in possession of *Flat No.21* as far back as on 24th March 2013. Dr. Saraf submitted that these proceedings were subsequently closed pursuant to orders of this Court holding that the disputes essentially are the civil disputes. He submitted that be that as it may, this panchnama therefore, clearly shows that it was the 1st Defendant who was in possession of *Flat No.21* long before 6th May 2013.

31. Dr. Saraf then submitted that *Faisal Essa* himself initiated criminal action against the Defendants and filed Criminal Writ Petition No.2663 of 2013 seeking investigation by the CBI or the CID into the matter of the properties of the Royal Family of Kuwait, register an FIR, and submit a report. This Court (in the said writ petition) directed *Faisal Essa* to approach the appropriate criminal court which would consider his request for transfer of investigation to the CBI or the CID. On 15th January 2014, *Faisal Essa* filed a criminal complaint against Defendant No.1, in which an investigation was ordered. This investigation was thereafter undertaken by the CID, which was apparently at the request of *Faisal Essa*. The CID carried out a detailed investigation and found that there was no case of either forgery or of criminal trespass. The CID found, on taking a report from the State Agency, that the signature of *Faisal Essa*

on the Tenancy Agreement was genuine. The CID, however, filed a chargesheet both against *Faisal Essa* and Defendant No.1 alleging that they had colluded together to cheat the owner. Defendant No.1 challenged the chargesheet and as against him, further proceedings under the said chargesheet were stayed by this Court vide its order dated 28th July 2015 passed in Criminal Application No 726 of 2015. Mr. *Faisal Essa* chose not to challenge the chargesheet. Dr. Saraf submitted that it is of great significance in the present matter, that the case pleaded by Defendant No.1 in his various affidavits, has not been responded to at all by the Plaintiff. Though, the Plaintiff had an opportunity to file a rejoinder to all the various affidavits filed by Defendant No.1, they chose not to do so. Dr. Saraf submitted that at the interim stage, where disputes are decided primarily on the basis of pleadings, the absence of a pleading cannot be substituted by oral arguments. Vital and relevant facts and contentions as pleaded in the reply have gone untraversed and this aspect shall be highlighted later. To put it in a nutshell, Dr. Saraf submitted that the Plaintiff's case is essentially one regarding forgery and fabrication. All aspects of forgery need to be meticulously pleaded to offer a fair opportunity to the opposite party to meet the same. In the course of arguments, it is not open to make allegations of fraud and fabrication which have not been pleaded and which the Defendants did not get an opportunity to meet.

32. Dr. Saraf thereafter submitted that the Plaintiff is not entitled to any equitable relief as she has approached this Court with a completely false case. He submitted that the essence of the Plaintiff's case is that *Faisal Essa* was in possession of Defendant No.1's premises till 6th May 2013, and it is thereafter, that Defendant No.1 trespassed upon *Flat No.21* and took forcible possession thereof without the consent of *Faisal Essa*/the Plaintiff. The identical case is also pleaded against Defendant Nos.2 & 3 who are mere stooges of Defendant No.1. He submitted that it is the case of the plaintiff, that all the Tenancy Agreements as also the rent receipts are all forged and fabricated. Dr. Saraf submitted that these issues are evidently false, and the Plaintiff has miserably failed to make out a *prima facie* case in that regard. He submitted that the documents and the records in fact clearly indicate that the case as pleaded in the plaint is completely false and baseless. Dr. Saraf submitted that it is for this very reason, that despite the fact that *Faisal Essa* was in the know of things and was very much alive when the suit was filed, was not impleaded as a party to the suit and neither is there any supporting affidavit of *Faisal Essa* affirming whatever is stated in the plaint. Dr. Saraf submitted that *Faisal Essa* was alive even when Defendant No.1 filed his 1st Affidavit in reply dated 25th July 2014 as well as the additional Affidavit dated 29th July 2015 (*Faisal Essa* died in or about 14th March,

2016). Despite the same, there is no rejoinder to the said affidavits, nor any statement or affidavit of *Faisal Essa* is filed to controvert what has been stated by Defendant No.1 with reference to the allegations of the Plaintiff regarding the fabrication of the Tenancy Agreement and the rent receipt issued to Defendant No.1. Dr. Saraf submitted that it is the case of the Plaintiff that the Tenancy Agreements entered into with all the Defendants as well as the rent receipts issued to them are forged and fabricated. The basis on which these allegations are made in the Plaintiff, are already set out earlier. The fact that the allegations as regards the forgery of the Tenancy Agreements is false, is apparent from the following:

(i) It is alleged that the signature on the said document is not of *Faisal Essa*. In this regard, a report of a private handwriting specialist is produced (**at Exh. G, Pg. 93 of the Plaintiff**). The Plaintiff states that the handwriting specialist compared the signature on the Tenancy Agreement with the "**actual signature of Mr. Faisal Essa Alyousuf Al-Essa as can be seen from the stamp of the signature of Mr. Faisal**". It is pertinent to note that the handwriting specialist did not have the original Tenancy Agreement, nor any original signature specimen of *Faisal Essa* was provided to the handwriting specialist. No effort was made by the Plaintiff or *Faisal Essa* to give the handwriting specialist access to the original signature specimen of *Faisal Essa*. The handwriting specialist prepared the said report based upon comparing the signatures of *Faisal Essa* on the photocopy of the Tenancy Agreement and other

writing/copies of *Faisal Essa*'s signature. Such a report of a private handwriting specialist defies any basic requirement for assessment of signatures and is clearly suspect and extremely doubtful.

(ii) As opposed to this, Defendant No.1 has produced a handwriting expert report wherein the handwriting expert has compared the actual signatures and initials of *Faisal Essa* on the original Agreement dated 30th October 2012 as against the undisputed earlier Tenancy Agreement dated 24th October 2008 entered into with Defendant No.1. The said report states that the signatures on all the Agreements are genuine.

(iii) Further, the CID investigation provided several documents bearing *Faisal Essa*'s signature, including the 2012 Agreement, to the Additional Chief State Examiner of Documents C.I.D., Maharashtra State, Mumbai. Various documents were furnished to the expert. Sample signatures of *Faisal Essa* signed before the police authorities were taken and those were also forwarded to the expert. Comparing all these documents and sample signatures, the State Expert opined that the signature on the Tenancy Agreement is in fact that of *Faisal Essa*. Signatures marked as Exhibits Q-9, Q-10 and Q-11 are signatures found on the 2012 Tenancy Agreement. The report states that while Exhibits Q-9 to Q-11 are similar to specimens and original specimens provided by *Faisal Essa* in person, they indicate different authorship in comparison to some other specimens. The Expert opined that seeing the various signatures of *Faisal Essa* on different documents, it appeared that *Faisal Essa* was deliberately signing differently at different places.

(iv) During the investigation, the CID considered the report of

the Additional Chief State Examiner of Documents C.I.D., Maharashtra State, Mumbai, for charges of forgery and fabrication and concluded as under:

"The complainant also denied the signatures on the disputed agreement. But this defence is also not correct. In fact during the course of investigation, it is disclosed that there was no uniformity in his signature. He was changing the manner and style of his signatures, not only on the one document but had signed differently on different pages of the same document. The admitted documents of the complainant bear different signatures. Investigating Officer had sent him 10 letters which had been acknowledged with different signatures."

Thus, the Report of the Addl. Chief Examiner (being an independent government authority), falsifies the allegations of forgery. The Report of the handwriting expert confirms that the complainant had signed the Agreements deliberately in such a manner as would give an impression to others that his signatures had been forged. This can only be since *Faisal Essa* would have contemplated that if in case the matter takes a different turn, then he must have the option to deny his signatures. The Report of the State Examiner puts an end to his mala-fide intention. This alone should be enough to deny the Plaintiff any interim relief.

(v) It was argued by the Plaintiff that a charge of forgery was framed against Defendant No. 1 under Sections 467 and 468 of IPC. This charge being contrary to the finding in the chargesheet, Defendant No. 1 challenged the same in this Court expressly raising the contention that the framing of the charge of forgery was clearly contrary to the findings in the chargesheet and the State Examiner's report. The chargesheet as against Defendant No. 1 was stayed by this Court by Order dated 28th

July 2015 passed in Criminal Application No. 726 of 2015. Thus, at least at the interim stage, it is clear on the basis of the report of an Expert of the State Government that the signature of *Faisal Essa* on the Tenancy Agreement is not forged.

(vi) The other factor which has been raised in support of the case of forgery of the Tenancy Agreement is that the Agreement has been signed as the Power of Attorney Holder of *Sheikh Saad* who died in 2008. The Plaintiff proceeds on the basis that the Tenancy Agreement has been executed as the Constituted Attorney of *Sheikh Saad*. **[Para 33 (i) of the Plaintiff]** A perusal of the Tenancy Agreement discloses that the same is executed with *Faisal Essa* as the Constituted Attorney of *Sheikh Abdullah*. Thus, even the Plaintiff is confused between the names of *Sheikh Abdullah Al-Salem Al-Sabah* and *Sheikh Saad Al-Abdullah Al-Salem Al-Sabah* **[paragraph 33(i) of the Plaintiff]**.

(vii) The contention of the Plaintiff in essence is that *Faisal Essa* acted as the Constituted Attorney of a dead person which was not possible. Firstly, the same cannot be a factor which is an indicator of a fabrication of the document. Once it is established that the signature on the document is that of *Faisal Essa* this aspect cannot be any indicator of any fabrication.

(viii) In any case, the Plaintiff does not dispute that *Faisal Essa* did in fact have the authority to create tenancies in *Al-Sabah Court* (the building) even after the death of *Sheikh Abdullah* and later *Sheikh Saad*. After the death of *Sheikh Saad*, the Plaintiff continued the authority of *Faisal Essa* to take care of the building. This is expressly admitted in paragraph 6 of the Plaintiff. In the course of arguments, a document, being a letter

addressed by the Plaintiff to *Faisal Essa* [which was annexed as an Exhibit to Criminal Writ Petition No. 2662 of 2013 filed by *Faisal Essa*] was produced, wherein the Plaintiff requested *Faisal Essa* to continue administering the property in Mumbai and thanked him for all the help and cooperation rendered towards the property since the time *Sheikh Saad* was alive. This letter was not disputed by the Plaintiff. It is an admitted position that subsequently the Plaintiff formalized the authority of *Faisal Essa* by executing a Power of Attorney in his favour in respect of the building *Al-Sabah Court*. In fact, even after the death of *Sheikh Saad*, *Faisal Essa* continued to act in the name of *Sheikh Saad*, executed various documents, created tenancies, and even filed legal proceedings in the name of *Sheikh Saad* which have not been disputed and have in fact been accepted and acted upon by the Plaintiff. Thus, it is apparent that the Plaintiff had no difficulty on *Faisal Essa* acting in the name of *Sheikh Saad* even after his death. The fact that *Faisal Essa* continued to act in the name of *Sheikh Saad* even after his death is apparent from the following:

- (a) Tenancy Agreement dated 24th October 2008 executed by *Faisal Essa* in favour of Defendant No. 1 for Flat No. 3.
- (b) Tenancy Agreement dated 1st April 2009 executed by *Faisal Essa* in favour of Sandeep Punamiya (brother of Defendant No.1) for Flat No. 20.
- (c) Tenancy Agreement dated 16th February 2010 executed by *Faisal Essa* in favour of Pradeepkumar Bansal for Flat No. 13.
- (d) Undisputed rent receipts issued to various tenants by *Faisal Essa* as the Constituted Attorney of *Sheikh Saad* for period after 13th May 2008.
- (e) Suit filed in the year 2010 by *Faisal Essa* in the name of

Sheikh Saad even after his death in which, a settlement was arrived at, and the Plaintiff has accepted the same.

- (f) *Faisal Essa* continued to address correspondence and letters in the name of *Sheikh Saad* pertaining to the building even after 13th May 2008.
 - (g) Even after the filing of the present Suit, correspondence addressed to Defendant No. 1 and other Tenants in the name of *Sheikh Saad*.
- (ix) In essence, *Faisal Essa* had the authority of the owners of the building from time to time to create tenancies in favour of different people. Acting upon the same, *Faisal Essa* from time to time created tenancies in favour of different people. It is an admitted position that the owners never came to India, and it was *Faisal Essa* alone who created tenancies in *Al-Sabah Court* and dealt with the tenants. So far as the occupants/tenants of *Al-Sabah Court* are concerned, *Faisal Essa*, for all purposes, was the person who was representing the owners and had full authority to create tenancies, receive rents and do all dealings with the tenants and it is on this basis that everyone proceeded.
- (x) The mere mention of *Sheikh Abdullah* in the Tenancy Agreement is immaterial. If the Plaintiff herself has been confused between the different names considering the similarity and length of the name and proceeds in the plaint on the basis that the Tenancy Agreement is executed by *Faisal Essa* as the Constituted Attorney of *Sheikh Saad*, no fault can be found with the tenants for not realizing the same. In any case, as stated earlier, for the tenants this was immaterial since it is an undisputed position that whoever was the owner, he/she had authorised *Faisal Essa* to do all acts and things in relation to *Al-Sabah Court* and that authority is not disputed. So long as

Faisal Essa had the authority of the existing owners, the mere fact that the predecessor in title of the existing owners is mentioned in the Tenancy Agreement can neither render the Tenancy Agreement void nor illegal and neither is it any indication of forgery or fabrication.

33. Dr. Saraf thereafter submitted that even the allegation of fabrication of the rent receipts is completely false. In this regard, he submitted that the Plaintiff in the plaint has alleged that the rent receipts relied upon by the Defendants in respect of *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises* are forged and fabricated. He submitted that it is the case of the Plaintiff, that the blank rent receipts along with the seals and stamps were kept in the office of the Plaintiff/*Faisal Essa* (which according to the Plaintiff was run from *the Ground Floor Premises; and the Sixth Floor Premises*) and that after 6th May 2013, the servants of the Plaintiff/*Faisal Essa* gave Defendant No.1 complete access to the office of the Plaintiff which housed the said blank receipts, seals and stamps. According to the Plaintiff, this is how Defendant No.1 got access to the blank rent receipt books, seals and stamps after 6th May 2013 and misused the same to create the subject rent receipts of the Defendants' premises being *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises*.

34. Dr. Saraf submitted that in paragraph 32 of the plaint, it is further stated that on the lawyers of the Plaintiff attending the matter in the Marine Drive Police Station in May 2013, they learnt that on the basis of forged and fabricated rent receipts, which Defendant No.1 have taken from the stolen blank rent bill book, Defendant Nos.1 to 3 sought to bolster their case as tenants in respect of *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises*. Dr. Saraf submitted that the Plaintiff, in support of her contention that the rent receipts are fabricated, relies upon certain factors enumerated in paragraph 34 of the Plaintiff. Dr. Saraf submitted that the entire case of the Plaintiff in this regard is *ex-facie* false and can be clearly established from the following:

- (i) On 12th December 2012, Defendant No. 1 filed RAN Application No. 47 of 2012 for fixation of standard rent. This RAN Application had the subject rent receipt annexed at Exhibit B thereto. Furthermore, on 12th February 2013, Defendant No. 1 filed a complaint against *Faisal Essa* before the Additional Chief Metropolitan Magistrate to which the subject rent receipt was also annexed. Defendant No. 1 also filed RAD Suit No. 174 of 2013 [in January 2013] before the Small Causes Court for a declaration of his tenancy rights in relation to *Flat No.21* to which the subject rent receipt was also annexed. Thus, the entire case that blank rent receipts, seals and stamps were stolen after 6th May 2013 and thereafter fabricated, is clearly false

since the subject rent receipt was in existence much prior thereto and had been annexed to these judicial proceedings. Similar is the case of Defendant No.2 & 3 who filed their RAD Suits in the Small Causes Court in April 2013 and to which their respective rent receipts were also annexed.

- (ii) Once it is demonstrated that the rent receipts were in existence much prior to 6th May 2013, the entire case of the Plaintiff that the blank rent receipt books, stamps, seals, etc. were stolen after *Faisal Essa*'s departure for Kuwait on 6th May 2013, and that the subject rent receipts are created from such stolen rent receipt books after 6th May 2013, collapses and falls to ground.
- (iii) The fact that the amounts reflected in the rent receipts were actually deposited in the account of *Faisal Essa* has not been disputed. Thus, the cheque given by Defendant No.1 which was handed over towards payment of rent (for which the subject rent receipt was issued) was duly encashed. Before the police authorities, the person who deposited the cheque also gave a statement categorically acknowledging that he had gone and deposited the cheque. Defendant No. 1 has categorically stated in its pleadings that the subject rent receipt was issued for *Flat No.21* against the cheque of Rs.50,000/- towards its rent which was duly encashed. There is no controvert by way of a rejoinder to this statement.
- (iv) It was contended on behalf of the Plaintiff (though not

pledged in the Plaintiff or in any affidavit in rejoinder) that these payments were in fact for the other tenanted premises of Defendant No.1 being Flat No.3. In the absence of any pleading and any controvert to the statement made in the reply that these payments were made towards deposit and rent under the impugned Tenancy Agreement, such an argument ought not to be permitted. In any case, on a bare perusal of the bank statement annexed by Defendant No.1, it is evident that Defendant No.1 has made separate payments of Rs. 12,420/- and Rs. 4,418/- on the same date as the payment of cheques of Rs. 50,000/- each indicating that these payments are separate transactions. If the said payments of Rs. 50,000/- were towards the undisputed tenancy of Flat No. 3 having a rent of Rs. Rs. 900/- per month, the question of making any further payments of Rs. 12,420/- and Rs. 4,418/- on the same day would not have arisen.

- (v) It was also argued on behalf of the Plaintiff (though not pleaded in the Plaintiff or in any affidavit in rejoinder) that the Tenancy Agreement is dated 30th October 2012 while the payments were received in September 2012 and therefore, these payments could not have been towards the alleged tenancy of *Flat No.21*. As pointed out hereinabove, in the absence of any pleading and controvert to the Affidavits of Defendant No. 1, such arguments cannot be made orally. In any case, as pointed out, it is not unknown that when a transaction is agreed to, very often, certain amounts are paid first and a formal agreement may be executed later. In the

absence of such a contention being raised in the plaint or any pleading, Defendant No. 1 is deprived of an opportunity to deal with the same in any pleading. In any case, the very cheque numbers of the cheques of Rs.50,000/- are referred to in the Tenancy Agreement and the rent receipt.

- (vi) The Plaintiff sought to take mileage of the fact that there was an error in the cheque number mentioned in the Tenancy Agreement and the rent receipt issued along with the same. **(Para 33(iii) of the Plaintiff)** As pointed out in the course of argument as well as in the affidavit of Defendant No. 1, it is merely that the two cheque numbers have got interchanged. The cheque issued towards rent has inadvertently been mentioned as towards deposit in the Tenancy Agreement and the cheque towards deposit has been mentioned as rent. The fact remains that both the said cheques were deposited and encashed. It is apparent that the Plaintiff is, as an afterthought, raising baseless allegations in an attempt to make out a case where none exists.
- (vii) Each of the factors mentioned by the Plaintiff in support of his case that the rent receipts are forged and fabricated are baseless and no manner established that the same are fabricated.
- (viii) The fact that the bill number, serial number and rent folio number is not mentioned in the rent receipt cannot be evidence of forgery. In the common course of events, when a receipt is handed over to any person, the person

does not try to see the receipt number, etc. At the highest, the person would see the amount for which the receipt is issued. The allegation that the seal which was put on the rent receipt was stolen by Defendant No. 1 from the ground floor office after 6th May 2013 is belied by what is stated hereinabove. As regards the fact that the rent receipt has the date written in hand whereas the other rent receipts have a stamp of a date is no indication of fabrication either. That is the choice of the person issuing the rent receipt and in circumstances where a stamp is not readily accessible or available, it is not unusual for a person to put a date by hand. Thus, there is no basis or material to suggest that the rent receipts are fabricated. The allegation regarding the fabrication of rent receipts is thus, ex-facie false.

35. Dr. Saraf submitted that this apart, the Plaintiff has also miserably failed to prove *Faisal Essa's* possession of *Flat No.21; the Ground Floor Premises; and the Sixth Floor Premises* up to 6th May 2013. Dr. Saraf submitted that it is the case of the Plaintiff that the trespass took place after 6th May 2013 and that the Plaintiff continued to be in possession till that date. To establish that the Plaintiff was in possession till 6th May 2013, the Plaintiff has relied upon the documents referred to and the averments in paragraph 52 to 61 in the Plaintiff. Dr. Saraf submitted that none of these documents in any manner establish the possession of the Plaintiff. He submitted that in fact some of the facts are expressly

proved false. Dr. Saraf submitted that the documents on which the Plaintiff relies to establish its possession and the contentions of Defendant No.1 in relation thereto are as under:

(i) Visit of Fahad M Al-Ajmi (Al-Ajmi) to the suit premises during his stay in March 2013 and the photographs taken by Al-Ajmi.

The Plaintiff contends that Al-Ajmi being the legal advisor of the royal family of Kuwait, visited India in March 2013 and during his visit, he personally visited the suit premises and found furniture and valuables in the premises and confirmed that *Faisal Essa* was in possession. Al-Ajmi during his visit, took photographs. A document said to be an affidavit of Al-Ajmi dated 15th July 2013 is annexed at Exhibit V, page 266 of the Plaintiff. Firstly, the document at Exhibit V is not even an affidavit. It is neither notarized nor signed before any consulate. Hence, no cognizance can be taken of such a document alleged to be an affidavit. Furthermore, before the police authorities, though Al-Ajmi was listed as a witness, *Faisal Essa* made a categorical statement that Al-Ajmi and even the Plaintiff herself shall not be called upon for investigation as they both are not concerned with the case (criminal complaint filed by *Faisal Essa*). It is pertinent to note that the case was of criminal trespass and Al-Ajmi's statement was sought to be relied upon before the police authorities. Even in this context, it is pertinent that neither Al-Ajmi, nor the Plaintiff were produced before the CID, and in fact, it was stated by *Faisal Essa* that they had nothing to do with the matter. This statement was made after filing of the present suit. In such circumstances, no reliance can be placed on the

said document alleged to be an Affidavit of Al-Ajmi. Even otherwise, Al-Ajmi's statement in the document alleged to be an Affidavit [which is annexed to the Plaintiff], lacks credence. It is inconceivable and unbelievable that Al-Ajmi would take the names and record the names of every servant who was present in the premises or would remember the names while making the said statements. It is clear that this statement, if at all given by Al-Ajmi (in the absence of any affidavit affirmed before a consulate), is made only to favour the Plaintiff to pursue its false case. It was contended that the fact that Al-Ajmi visited the premises has not been disputed. Defendant No.1 has clearly stated that under the Tenancy Agreement as well as in law, the landlord is entitled to inspect the premises and that being so, at the request of *Faisal Essa*, he was allowed to inspect the premises. The mere fact that *Faisal Essa* visited the premises cannot be a proof of possession.

(ii) Photographs:

As regards the photographs said to have been taken during the visit of Al-Ajmi, the said photographs will have to be proved during the trial, and in accordance with law. In any case, the said photographs do not in any manner establish the possession of *Faisal Essa*. Further, Defendant No. 1 has categorically stated that in one of the photographs at page 225 of the Plaintiff, the father of Defendant No. 1 is seen sitting on a chair. This has not been denied by the Plaintiff in any pleadings. In the course of the arguments, it was merely stated that the figure is a mere silhouette of a human being without any facial features of whom identification is difficult. This was never stated in any affidavit. In any case, this does not constitute any denial. There is no explanation that if *Faisal*

Essa was in possession and Al-Ajmi came to visit the premises when it was in the possession of *Faisal Essa*, how and why was the father of Defendant No. 1 present in *Flat No.21*. Thus, the photographs themselves establish the possession of Defendant No. 1.

(iii) Report of the valuer E.V. Lokhandwala & Associates:

In paragraphs 55 and 56 of the Plaintiff, it is stated that Al-Ajmi engaged the services of E.V. Lokhandwala & Associates for valuation of the building and that the valuer has confirmed in its report that the suit premises were in owners' occupation. The Valuation Report states that the valuer had inspected the premises (**Paras 55 and 56 r/w Exh. S, Pg. 243 of the Plaintiff**). From this, it was suggested that the valuer inspected the premises in March 2013 on Al-Ajmi's instructions and thereafter confirmed that the subject property was in owner's possession. This entire stand has been proved false. Before the CID, the valuer's representative (Mr. Dattaram Taware) made a statement that he had visited the premises/the building in the year 2005 and that he had done the valuation on that basis. He has confirmed that the visit referred to in his report is a visit of 2005 and not of 2013, as was sought to be suggested. Furthermore, in a supplementary statement, he confirmed that neither he nor anyone from his office visited the building in the year 2013. He clarified that the Valuation Report prepared on the instructions of Al-Ajmi is based on the data available with E.V. Lokhandwala & Associates from the site visit and Valuation Report of 2005. The valuer Dattaram Taware categorically states that as he did not visit the building in 2013. Thus, the entire suggestion that the valuer visited the premises

in 2013 and confirmed that the premises were in the possession of the owner is false.

(iv) Report of interior decorators:

Reliance placed on the interior decorators' ('INDECO') refurbishment proposal engaged by Al-Ajmi does not in any manner establish the possession of *Faisal Essa*. It merely states that they surveyed the premises on the 5th floor. This does not in any manner establish any possession. In any case, there is not even an identification of the premises on the 5th floor. The Valuer's Report discloses that the 5th floor has four units.

(v) Electricity meter:

In paragraph 59, it is stated that since electricity meter shows the name of the Plaintiff, the premises are in the possession of the Plaintiff. This contention is without any basis. The mere continuance of an electricity meter in the name of the Plaintiff for some time till it is transferred in the name of a tenant does not in any manner establish possession. It is a known fact that even after a person purchases premises, the electricity meter continues in the name of the seller till such time a transfer application is made. It is pertinent that the Plaintiff has not even produced a single electricity bill for *Flat No.21* which has been paid by *Faisal Essa*/owners nor is there an averment that any such electricity bill was paid by the Plaintiff/*Faisal Essa*. If a person is in possession, electricity bills and the fact of its payment, is always one of the aspects in support of possession. The Plaintiff has miserably failed in this regard. On the contrary, Defendant No. 1 has produced electricity bills for certain months between October 2012 to May 2013 which were

paid by Defendant No. 1. Furthermore, Defendant No. 1 made a transfer application pursuant to which electricity meter also stood transferred in the name of Defendant No. 1 in December 2013.

(vi) **MTNL's bills;**

It is alleged by the Plaintiff that the MTNL bills for the period 1st May 2013 to 31st May 2013 reflect that on these days international calls to Kuwait were made from certain landline numbers which were located on the ground floor, and which, according to the Plaintiff, are premises occupied by Defendant No. 2. Firstly, this MTNL bill does not pertain to *Flat No.21* on the 5th floor which relates to Defendant No. 1. In any case, before the police authorities, the officer of the MTNL was called during investigation and the MTNL officer made a statement before the police authorities which is recorded in the CID report to the effect that *Faisal Essa* had applied for transfer of the phone from 6th floor to ground floor and accordingly, on 8th May 2013 after complying with the request of the complainant, the instrument was shifted from the 6th floor to the ground floor. It cannot be disputed that there is more than one unit on the ground floor which is reflected from the valuer's report at page 243 of the Plaintiff. Thus, there is nothing to demonstrate that the said telephone was in any of the premises which are the subject matter of the present Suit. In any event, Defendant No. 1 is unrelated to *the Ground Floor Premises* and/or *the Sixth Floor Premises*. The MTNL landline calls do not establish the Plaintiff's case of possession in respect of Defendant No. 1's premises being *Flat No. 21* on the 5th floor.

(vii) **Affidavits of tenants:**

In paragraph 61 of the plaint, the Plaintiff has relied upon affidavits of various tenants at Exhibits Y-1 to Y-16. It is stated that the said affidavits confirm that *Faisal Essa* was in the suit premises till 6th May 2013. A perusal of the said affidavits discloses that all of them are verbatim. Each of the tenants claim to have met Faisal in the suit premises (all three premises on different floors being the 6th floor, 5th floor and the ground floor) till the last week of April 2013 until he left for Kuwait, which is entirely inconceivable. Such verbatim affidavits completely lack credence. In this regard, reliance is placed on the following judgments:

(a) **Broadhead's Application for Registration of a Trademark** (Judgment of Court of Appeals, LXVII RPC 209 at page 211, 3rd paragraph and last paragraph).

The court held that the evidence which consists of a number of people signing precisely similar statement lacks persuasiveness. The court noticed that the words were quite plainly invested by some persons who are concerned in the preparation of the case and that "every player in the orchestra plays in unison." The court observed that if one read one paragraph on each side and multiplied it by the number of declarations on each side, you have got the totality of evidence.

(b) **Re: Christiansen's Trade Mark (1886 RPC 54 at page 60 and 61)** (Judgment of the High Court Justice Chancery Division, last seven lines).

The court observed that when evidence is given on affidavit and there are numerous affidavits all swearing to exactly the same thing and in a stereotype fashion, they are suspect

because every person could not have had the same set of facts.

In any case, most of the tenants gave statements before the police by stating that they did not know the contents of the affidavits. The affidavits were prepared by *Faisal Essa*, and they were merely told that the affidavits had something to do with the building and the tenants signed the same without knowing the contents. Various tenants even withdrew their affidavits before the Magistrate. A contention that a couple of tenants stood by their statement is of no help in the face of the retraction by such large number of tenants. The attempt on the part of *Faisal Essa* to gather such evidence from people without knowing what they signed, is sufficient to demolish the case of the Plaintiff. The comment on the fact that the tenants were pressurized by proceedings to retract their statements is without any basis in the pleadings and in any case, in the face of a withdrawal before a Magistrate, such a comment is unjustified. As regards a couple of tenants who have not retracted the statements, they could have very well done so to merely favour *Faisal Essa*/the owners. These will be matters of evidence at the stage of trial.

36. Dr. Saraf submitted that apart from the aforesaid, there are various other documents and material which confirm that it was Defendant No.1 who was in possession of *Flat No.21* right from the October 2012. Before the CID, the statements of various persons were recorded wherein they confirmed the possession of Defendant No.1. Even

the police panchnama drawn up pursuant to the investigation in the complaint filed by Defendant No.1 confirmed the possession of Defendant No.1 of *Flat No.21*.

37. Dr. Saraf submitted that when faced with all this overwhelming evidence, especially, the investigation carried out by the CID, the Plaintiff sought to raise a contention that under Section 162 of the Cr.P.C, the statements made to the police officer in the course of the investigation cannot be relied upon in the present proceedings. Dr. Saraf submitted that this submission is *ex-facie* contrary to the wordings of the said Section and is in any event now covered by a decision of the Hon'ble Supreme Court in the case of ***Khatri & Ors. Vs. State of Bihar*** [(1981) 2 SCC 493]. Dr. Saraf submitted that the aforesaid decision now clearly lays down that the bar under Section 162 is only in the inquiry or trial in respect of the offence which was under investigation at that time when the statement was made. It was held that the said provision has no application in civil proceedings and the statement made before the police officer in the course of the investigation can be used as evidence in civil proceedings, provided it is otherwise relevant under the Indian Evidence Act. Dr. Saraf submitted that the mere fact that this objection was raised clearly shows that the Plaintiff having approached this Court with a false case, now seeks to obstruct any credible material which

clearly indicates the falsity of their case. According to Dr. Saraf, it speaks volumes on the conduct of the Plaintiff. Dr. Saraf submitted that in the absence of this Court having before it, the evidence being led by the parties and in the face of a lack of an affidavit in rejoinder on behalf of the Plaintiff, the material gathered by the CID in the course of its detailed investigation and the statements recorded of various persons, are of great relevance and significance, before this Court decides whether any interim relief ought to be granted in favour of the Plaintiff. Dr. Saraf submitted that in the facts of the present case, it is nowhere in dispute that *Faisal Essa* did have the authority to create tenancies in the building *Al-Sabah Court*. The Plaintiff does not proceed on the basis that *Faisal Essa* had no authority of the owners to create any tenancy. In fact, in paragraph 6 of the Plaintiff it is admitted that *Sheikh Saad*, during his lifetime, had authorized *Faisal Essa* and after the death of *Sheikh Saad* the Plaintiff had granted the necessary and specific authority to *Faisal Essa* to take care of the building *Al-Sabah Court*. Dr. Saraf submitted that from the plaint itself it is clear that *Faisal Essa* had the authority to create tenancies in the building *Al-Sabah Court* and this fact is undisputed.

38. Dr. Saraf submitted that in the plaint it is in fact contended that even if the Tenancy Agreement was executed by *Faisal Essa* as a Power of Attorney Holder of *Sheikh Saad*, *Sheikh Saad* had expired prior

thereto and hence the Tenancy Agreement could not have been executed. This fact is highlighted as an aspect of forgery and fabrication as would be apparent from the opening part of paragraph 33 of the plaint. There is no contention in the plaint that the Tenancy Agreement was executed by Mr. *Faisal Essa* as a Power of Attorney Holder of *Sheikh Abdullah* and that *Sheikh Abdullah* had never given any such Power of Attorney. Further it is not even the case in the plaint that *Faisal Essa* had no authority whatsoever to create tenancies of any flats/units in the building called *Al-Sabah Court*. In fact, as mentioned earlier, *Faisal Essa* had created several tenancies even after the death of *Sheikh Saad* and which tenancies have never been disputed by the Plaintiff. Same is the case with reference to the rent receipts. Dr. Saraf submitted that even after the death of *Sheikh Saad*, *Faisal Essa* continued to issue rent receipts, and which rent receipts also have never been disputed by the Plaintiff. Dr. Saraf submitted that this does not stop here. A suit was filed by *Faisal Essa* before the City Civil Court being Suit No. 1509 of 2010 in the name of *Sheikh Saad* after his death. In that suit a settlement was arrived at with the Defendant therein. The cause title of the Suit indicates that *Sheikh Saad* was represented as alive and a 77 year old adult. The Plaintiff has taken benefit of the settlement and has never disputed the initiation of the legal proceedings in the name of *Sheikh Saad* even after his death. Dr. Saraf submitted that all this material makes it clear that *Faisal Essa*

had the express authority on behalf of the owners to create tenancies, transfer tenancies, collect rent, etc. in relation to the flats in the building called *Al-Sabah Court*. In any case, at the relevant time (in 2012), *Faisal Essa* definitely had authority of the Plaintiff to create tenancies in the building, and this aspect is not disputed. Apart from paragraph 6 of the plaint, where there is a categorical admission, *Faisal Essa* also made supplementary statements dated 5th March, 2014 and 5th May, 2014 before the CID in which he admitted that he had been appointed as the administrator and care taker of the building under the Power of Attorney up to the year 2008 and that thereafter, the Plaintiff sent a letter and informed him that he should continue to work in the building as its administrator and that a Power of Attorney would be sent later. He had further stated that the Power of Attorney was thereafter given in August 2013. From the aforesaid, it is apparent that *Faisal Essa* was in fact authorized at all times to create tenancies in the building called *Al-Sabah Court*. It is also not disputed that the landlord of the *Al-Sabah Court* had never come to India and had never visited the building. For the occupants of the building, for all the practical purposes, *Faisal Essa* was acting as the landlord duly authorised by the owners to do all that is required in respect of the building. After the death of *Sheikh Saad* also, *Faisal Essa* continued to act as the Power of Attorney Holder of *Sheikh Saad* and even initiated legal proceedings on that basis. The Plaintiff permitted this

course of action. The death of any of the owners of the building was immaterial to the tenants as the tenants exclusively dealt with *Faisal Essa* for any purposes pertaining to the building. Dr. Saraf submitted that in any event, the Plaintiff has failed to plead or place anything on record to indicate that the tenants including Defendant No.1 were aware of the death of *Sheikh Abdullah* or *Sheikh Saad* and its impact on the authority of *Faisal Essa* to deal with the said building. Dr. Saraf submitted that this is clearly indicative of the fact that the contention now raised in the course of arguments, is clearly an afterthought and without any basis even in the plaint.

39. Dr. Saraf then submitted that it was contended by the plaintiff that no Power of Attorney of *Sheikh Abdullah* has been produced till date by any of the Defendants. According to Dr. Saraf, firstly, there is no contention in the plaint that *Faisal Essa* had no authority from *Sheikh Abdullah* to create tenancies. In such circumstances, the question of Defendant No.1 responding to the same by producing any Power of Attorney of *Sheikh Abdullah* did not arise. In any case, since this was argued orally by the Plaintiff, a copy of the Power of Attorney dated 11th May, 1959 of *Sheikh Abdullah* has been given to the Court. Dr. Saraf submitted that this apart, in any case, the authority of *Faisal Essa* given by *Sheikh Saad* and subsequently by the plaintiff along with the other

legal heirs of *Sheikh Saad* was extended under the relevant Power of Attorneys issued in favour of *Faisal Essa* and which fact is admitted. Reference to these documents has been made at several places such as the statement of *Faisal Essa* before the CID, annexures to his Criminal Writ Petition No. 2662 of 2013 and contentions of the Advocates of *Faisal Essa* in their complaints. Once the owners of the building allowed *Faisal Essa* to hold himself out to be the one authorized on behalf of the owners to be the administrator of the building *Al-Sabah Court* and to create tenancies, it makes little difference whether he held himself out to be representing *Sheikh Abdullah*, *Sheikh Saad* or the present Plaintiff. Dr. Saraf submitted that the tenants of *Al-Sabah Court* only dealt with *Faisal Essa* and for all practical purposes, Mr. *Faisal Essa* was the landlord of the said building since he was authorized by the owners to deal with the building in whichever way he thought fit. Once this is the case, if the Plaintiff has any grievance, it is against *Faisal Essa* who was their agent and not against the tenants of *Al-Sabah Court* which include the Defendants in the present Suit. In support of this proposition, Dr. Saraf relied upon the various sections of the Indian Contract Act, 1872 which deals with the authority of an agent.

40. In conclusion, Dr. Saraf submitted that the Plaintiff has failed to make out a *prima facie* case. He submitted that most of the

arguments canvassed before me were much beyond the case pleaded in the plaint. According to Dr. Saraf, far from making out a *prima facie* case, the Plaintiff has been unable to answer vital aspects pleaded in the Affidavits in reply, which, clearly demonstrates the falsity of the case pleaded in the plaint. Dr. Saraf submitted that at the interim stage, the report of the State Examiner as regards the genuineness of the signature of *Faisal Essa* on the Tenancy Agreements is extremely crucial. Further, statements made by the various persons before the police authorities and the detailed material collected by them in the course of the investigation also discloses, at least *prima facie*, that there was no criminal trespass or forgery by Defendant No.1 as alleged in the plaint. Dr. Saraf submitted that the Plaintiff has maintained a stoic silence and chosen not to file any response to the various affidavits filed by Defendant No.1 including the affidavit which pointed out the rent and deposit cheques paid under the Tenancy Agreement, and which were encashed by *Faisal Essa*. Dr. Saraf submitted that these aspects cannot be sought to be answered in arguments in the absence of any affidavit/pleading being filed by the Plaintiff.

41. Dr. Saraf lastly submitted that even on the test of balance of convenience, the same is not in favour of the Plaintiff and is totally in favour of the Defendants. As far as the balance of convenience is

concerned, Dr. Saraf submitted that it is an undisputed position that the Plaintiff has never visited the suit premises and even now, the Plaintiff has stopped taking care of the building *Al-Sabah Court* altogether. In fact, as on date, the occupants of the building have formed an association called the “*Al-Sabah Court Tenants Association*” and it is this Association which is now collecting the rent and maintaining the building. The Plaintiff has stopped collecting rent from the tenants since 2016 and it is the tenants themselves who are collecting the rent and using it towards the maintenance and upkeep of the building. Dr. Saraf submitted that Defendant No.1 has already made a statement before this Court that Defendant No.1 shall not deal with or part with possession of *Flat No.21* and on the basis of which this Court was pleased to pass an order dated 7th May 2014 in the above Notice of Motion. Dr. Saraf submitted that at the interim stage, in the facts and circumstances of the present case, this adequately protects the interest of the Plaintiff pending the trial. There is absolutely no warrant for the appointment of a Court Receiver especially when the Plaintiff has miserably failed to establish that the Tenancy Agreements under which the Defendants occupied their respective premises, are forged and fabricated. For all the aforesaid reasons, Dr. Saraf submitted that other than the relief of injunction, no further relief be granted in favour of the Plaintiff.

SUBMISSIONS OF DEFENDANT NO.2:

42. Mr. Ardeshir, the learned Counsel appearing on behalf of Defendant No.2, reiterated all the arguments canvassed By Dr. Saraf. Mr. Ardeshir submitted that Defendant No.2 is a tenant of *the Ground Floor Premises* [next to Flat No.1] in the building called *Al-Sabah Court*. He submitted that a tenancy of *the Ground Floor Premises* was validly created under a Tenancy Agreement dated 31st January 2013. As far as Defendant No.2 is concerned, Mr. Ardeshir submitted that Defendant No.2, in his affidavit in reply dated 25th July 2014, has clearly stated that Defendant No.2 was an estate broker who came in contact with *Faisal Essa* and Defendant No.1. Since he was in need of a small office for business in South Mumbai, *Faisal Essa* offered him *the Ground Floor Premises* on a tenancy basis and put him in possession thereof on 1st August 2012 and thereafter promised to execute and register a Tenancy Agreement. He submitted that Defendant No.2 has specifically stated that on 30th January 2013, *Faisal Essa*'s son, one *Mr. Basar*, called Defendant No.2 and Defendant No.3 at his residence and requested them to sign the original Tenancy Agreements already prepared on the same/identical terms as that of the other Tenancy Agreements executed by *Faisal Essa*. It is specifically pleaded in the affidavit that at this time, Defendant No.2 signed and handed over a cheque of Rs.9,000/- on account of advance payment of rent up to 31st December 2013. Defendant

No.2 has further stated that the next day i.e. 31st January 2013, the said *Mr. Basar* once again called him at his residence and when he reached there, *Mr. Basar* gave him the Tenancy Agreement which had been signed by *Faisal Essa* along with the rent receipt for the payment of rent. Defendant No.2 has specifically stated that at this time, the said *Mr. Basar* had informed him that the said Tenancy Agreement had been signed and executed by *Faisal Essa* in hospital before a Notary “*M. N. Naqvi*”.

43. Mr. Ardeshir submitted that this is the positive case with which Defendant No.2 has approached this Court. The plaintiff, let alone putting forward her case, has even failed to so much as to formally deny the facts pleaded by Defendant No.2 by filing any affidavit in rejoinder. Mr. Ardeshir submitted that all these facts have gone uncontroverted and thus admitted by the plaintiff. He submitted that pertinently *Faisal Essa* was very much alive when Defendant No.2 filed his affidavit in reply dated 25th July 2014. Despite this, no affidavit has been filed by *Faisal Essa* controverting what is stated in the affidavit of Defendant No.2. This being the case, Mr. Ardeshir submitted that the pleadings of Defendant No.2 are itself enough to deny the Plaintiff any interim relief.

44. This apart, Mr. Ardeshir submitted that at least as far as

Defendant No.2 is concerned, there is intrinsic evidence to show that the Tenancy Agreement entered into with Defendant No.2 [dated 31st January 2013], far from being forged and fabricated, actually emanated from *Faisal Essa*. Mr. Ardeshir took me through the Tenancy Agreement and more particularly the execution page thereof which shows that it has been signed by *Faisal Essa* and Defendant No.2 and who have also affixed their respective photographs thereto. The Execution page also bears the signature and stamp of a Notary “*M. N. Naqvi*” and the signature and stamp of an advocate of this Court “*Mutavalli G. M.*” along with the words “*IDENTIFIED BY ME*”.

45. Mr. Ardeshir then pointed out that the Plaintiff has relied upon the 16 affidavits filed by the tenants of the said building, and which are annexed at **Exhibits Y1 to Y16** to the plaint. He submitted that it is the Plaintiff’s own case that these affidavits are genuine. He then took me through the execution page of these affidavits and submitted that 14 out of the 16 affidavits bear the signature and stamp of the Notary “*M. N. Naqvi*” and the signature and stamp of an Advocate of this Court “*Mutavalli G. M.*” along with the words “*IDENTIFIED BY ME*”. He submitted that Defendant No.2 has nothing to do with these affidavits and in fact, the CID during its investigation has come to the conclusion that these affidavits have in fact been prepared by the Plaintiff’s advocate

and thereafter simply given to the tenants to sign. Mr. Ardeshir submitted that this does not stop here. During the course of arguments, Mr. Ardeshir tendered across the bar a Deed of Retirement of Trustees dated 13th July 2011 by which *Faisal Essa* was confirmed as one of the surviving Trustees of the Helal Bin Fajhan Trust. Annexed to this Deed dated 13th July 2011 is a Power of Attorney dated 8th June 2011 given by Mr. Mahed Bin Helal Bin Fajhan to *Faisal Essa*. Pertinently, a perusal of the Power of Attorney annexed thereto discloses that this document also bears the Notarial stamp of “*M. N. Naqvi*”. Mr. Ardeshir submitted that it is not a mere coincidence that the 14 affidavits annexed to the plaint i.e. 14 out of 16 affidavits (**Exhibits Y1- to Y-13 & Y16**) and the Tenancy Agreement entered into by *Faisal Essa* with Defendant No.2 bear both (i) the signature and the Notarial stamp of “*M. N. Naqvi*”, and (ii) the signature and stamp of an Advocate of this Court, “*Mutavalli G. M.*” along with the words “*IDENTIFIED BY ME*”. Mr. Ardeshir submitted that when one looks at all this material, at least *prima facie*, it is clear that the Tenancy Agreement dated 31st January 2013 executed by *Faisal Essa* in favour of Defendant No.2, far from being a forged and fabricated document, is a document that actually emanated from *Faisal Essa*. Mr. Ardeshir submitted that if he is correct in his submission, then the entire case of the Plaintiff falls to the ground and the Plaintiff is not entitled to any interim relief.

46. Mr. Ardeshir submitted that being confronted by these facts, the Plaintiff sought to contend during oral arguments that the stamps of the Notary “*M. N. Naqvi*” and the advocate “*Mutavalli G. M.*” along with the words “*IDENTIFIED BY ME*” were forged and fabricated by Defendant No.2. Mr. Ardeshir submitted that this argument is stated only to be rejected. Mr. Ardeshir submitted that nowhere in pleadings have the Plaintiff ever taken up such a contention. This apart, Mr. Ardeshir submitted that the Tenancy Agreement dated 31st January 2013 has been annexed as **Exhibit-A** to RAD Suit No. 606 of 2013 filed by Defendant No.2 before the Small Causes Court at Mumbai seeking *inter-alia* a declaration of his tenancy rights in respect of *the Ground Floor Premises*. The plaint in the aforesaid suit was affirmed on 1st April 2013 and the aforesaid Suit was filed on 3rd April 2013. This was long before any of the affidavits (**Exhibits Y1 to Y16**) were executed by the tenants of the building called *Al-Sabah Court*. The affidavits of the 16 tenants (**Exhibits Y1 to Y16**) were executed only sometime in August 2013 and were brought to the knowledge of Defendant No.2 only after being served with this Plaintiff which was itself filed only in December 2013. It is thus inconceivable that Defendant No.2 would have known that the Plaintiff would firstly file this suit subsequently, and in such suit, would rely upon the affidavits of the tenants and would get such affidavits notarized by

“*M. N. Naqvi*” and/or get them identified by “*Mutavalli G. M.*”. Mr. Ardeshir submitted that such as much as Defendant No.2 would like to believe, he is not a person who can see into the future. He therefore submitted that the argument of the Plaintiff that the stamps of the Notary “*M. N. Naqvi*” and that of advocate “*Mutavalli G. M.*” along with the words “*IDENTIFIED BY ME*” are forged and fabricated by Defendant No.2 holds no substance.

47. According to Mr. Ardeshir, the authenticity of his Tenancy Agreement is also corroborated by Defendant No.2’s bank statement. Mr. Ardeshir submitted that clause 3 of the Tenancy Agreement clearly records that Defendant No.2 had paid a sum of Rs. 9,000/- to *Faisal Essa* by a post-dated cheque No. 098983 dated 1st February 2013 drawn on Axis Bank, Andheri (West) Branch, on account of advance rent for the period of 12 months from January 2013 to December 2013. Mr. Ardeshir submitted that Defendant No.2 has produced his bank statement which shows that the aforesaid cheque was in fact encashed by *Faisal Essa* on 2nd February 2013. It is an admitted position that Defendant No.2 had no prior relationship with the Plaintiff or *Faisal Essa* and therefore had no occasion to pay *Faisal Essa* any money, apart from under the Tenancy Agreement. If the Tenancy Agreement is forged and fabricated, *Faisal Essa* would have had no occasion to accept the money from Defendant

No.2 and which was referred to in the Tenancy Agreement. This amply demonstrates that the said Tenancy Agreement is a genuine document which not only emanated from *Faisal Essa*, but it was in fact acted upon by *Faisal Essa* who accepted the consideration thereunder. There is absolutely no explanation coming forth from the Plaintiff either in the pleadings or even during the course of arguments as to why *Faisal Essa* encashed the cheque of Rs. 9,000/- from Defendant No.2, if Defendant No.2 was a rank trespasser.

48. Mr. Ardeshir then submitted that according to Plaintiff, Defendant Nos. 2 and 3 are only the stooges of Defendant No.1 and they have trespassed into the property of the Plaintiff after *Faisal Essa* left for Kuwait on 6th May 2013. If this situation is to be believed, there is no explanation as to why *Faisal Essa*, on 2nd February 2013, encashed the cheque of Rs.9,000/- given by him towards the advance payment of rent. In conclusion, therefore, Mr. Ardeshir submitted that this clearly goes to establish beyond any doubt that the Tenancy Agreement dated 31st January 2013 entered into by *Faisal Essa* with Defendant No.2 is a genuine Agreement and is not forged and fabricated. Consequently, Mr. Ardeshir submitted that no case is made out by the Plaintiff for seeking any interim reliefs and the Notice of Motion be rejected.

SUBMISSIONS OF DEFENDANT NO.3:

49. Mr. Bharucha, the learned Counsel appearing on behalf of Defendant No.3, adopted the arguments canvassed by Dr. Saraf as well as Mr. Ardeshir. Mr. Bharucha submitted that even as far as Defendant No. 3 is concerned, just like the Tenancy Agreement of Defendant No.2, the Tenancy Agreement of Defendant No.3 also emanates from Mr. *Faisal Essa*, and it is the same Notary and Advocate who has stamped and identified the Tenancy Agreement of Defendant No.3. Mr. Bharucha submitted that in the affidavit in reply dated 9th March 2015 filed by Defendant No.3, he has specifically averred as to how Defendant No.3 came into possession and occupation of *the Sixth Floor Premises* [adjacent to the terrace] admeasuring approximately 300 sq.ft. (carpet). The Plaintiff is fully aware of the contents of the affidavit in reply filed by Defendant No.3. Despite the same, the Plaintiff has not filed any affidavit countering what is stated by Defendant No.3 to his personal knowledge and has kept on insisting that Defendant No.3 is a trespasser in relation to *the Sixth Floor Premises*. Mr. Bharucha therefore submitted that no case whatsoever has been made out for granting any interim reliefs in favour of the Plaintiff and consequently the Notice of Motion be dismissed with costs.

REASONING AND FINDINGS:

50. I have heard the learned counsel for the respective parties at great length and I have also perused the papers and proceedings in the above Suit. Before I can consider what relief, if any, can be granted to the Plaintiff, one has to understand the case with which the Plaintiff has approached this Court. The above Suit has been filed by the Plaintiff to declare that the Defendants or any of them are trespassers and have no right of any nature whatsoever in (i) *Flat No. 21* [on the 5th floor]; (ii) *the Ground Floor Premises* [next to Flat No.1]; (iii) *the Sixth Floor Premises* [adjacent to the terrace]; and *the Parking Garage* [of 225 sq.ft.] of the building called *Al-Sabah Court* situated at 73/105, Marine Drive, Mumbai – 400 020. A further declaration is sought that the Tenancy Agreement dated 30th October 2012 entered into with Defendant No.1 and two further Tenancy Agreements both dated 31st January 2013, entered into with Defendant Nos. 2 and 3 respectively, are forged and fabricated and do not bind the Plaintiff. As a consequence, the plaintiff also seeks a decree against the Defendants to handover quiet, vacant and peaceful possession of (i) *Flat No. 21* [on the 5th floor]; (ii) *the Ground Floor Premises* [next to Flat No.1]; (iii) *the Sixth Floor Premises* [adjacent to the terrace]; and *the Parking Garage* [of 225 sq.ft.] to the Plaintiff or her assignees and/or her Constituted Attorney. It is in aid of these final reliefs that the Plaintiff seeks the appointment of a Court

Receiver of the aforesaid premises as well as an order of mesne profits against the Defendants in the amount of Rs.35 Lakh per month. The relief of mesne profits is sought on the basis that the Defendants are in unlawful occupation and possession of the premises mentioned above.

51. In the plaint, it is pleaded that the Plaintiff is the daughter of *Sheikh Saad*, “Emir” of Kuwait, who was the owner of the building *Al-Sabah Court*. This building was owned by the Royal Family of Kuwait. Originally *Sheikh Abdullah* was the long-term lessee of this building. He expired on 24th November 1965 leaving *Sheikh Saad* as his legal heir. After the death of *Sheikh Saad* in 2008, the Plaintiff and the other heirs of the *Sheikh Saad* are the present owners of the said building. It is, thereafter, the case of the Plaintiff that during the lifetime of the *Sheikh Saad*, the said building was taken care of by *Faisal Essa* and after the demise of *Sheikh Saad*, his heirs including the Plaintiff, granted the necessary and specific authority to *Faisal Essa* to take care of the building. According to the Plaintiff, the entire building is occupied by the tenants except (i) *Flat No. 21* [on the 5th floor]; (ii) *the Ground Floor Premises* [next to Flat No.1]; (iii) *the Sixth Floor Premises* [adjacent to the terrace]; and *the Parking Garage* [of 225 sq.ft.]. According to the Plaintiff, these premises were occupied by *Sheikh Saad* and thereafter, his legal heirs (including the Plaintiff), through *Faisal Essa*.

52. It is the case of the Plaintiff that *Faisal Essa* had a kidney transplant at Breach Candy hospital between 18th January 2013 and 16th February 2013 and was thereafter recuperating at home and regularly visiting the hospital. On 6th May 2013, *Faisal Essa* left India for Kuwait, leaving the keys of the premises mentioned above with his staff. According to the Plaintiff, Defendant No.1 had developed friendly relations with the staff of *Faisal Essa* and immediately after *Faisal Essa* left India on 6th May 2013, the Defendants took forcible possession of the premises described hereinabove, namely, (i) *Flat No. 21* [on the 5th floor]; (ii) *the Ground Floor Premises* [next to Flat No.1]; (iii) *the Sixth Floor Premises* [adjacent to the terrace]; and *the Parking Garage* [of 225 sq.ft.]. It is the case of the Plaintiff that since all the important documents in relation to the said building such as personal important documents, government documents, documents pertaining to title and tenancy of the building, receipt books of the past and blank receipts books, seals, and signature stamps etc were all in *the Sixth Floor Premises* [adjacent to the terrace] and *the Ground Floor Premises* [next to Flat No.1], Defendant No.1 got access to all the blank receipts, seals and signature stamps etc and thereafter, in collusion with Defendant Nos.2 & 3, hatched an unlawful conspiracy to illegally oust the Plaintiff from (i) *Flat No. 21* [on the 5th floor]; (ii) *the Ground Floor Premises* [next to Flat No.1]; (iii) *the*

Sixth Floor Premises [adjacent to the terrace]; and *the Parking Garage* [of 225 sq.ft.]. According to the Plaintiff, after *Faisal Essa* left for Kuwait on 6th May 2013, Defendant No. 1, in connivance with Defendant Nos. 2 and 3, took illegal and forcible possession of the premises mentioned above alongwith the rent bill books, relevant bills, seals, and signature stamps etc. Thereafter, to somehow legitimize their illegal possession and occupation of the premises described above, the Defendants created forged and fabricated documents by way of creation of illegal Tenancy Agreements and rent receipts in relation to the premises described herein.

53. To substantiate the case of the Plaintiff that the signatures of *Faisal Essa* on the Tenancy Agreements were forged, the Plaintiff has relied upon the report of the handwriting expert. Over and above this, it was argued/contended that since the Emir of Kuwait (*Sheikh Saad*) expired in 2008, no Agreement could have been executed by *Faisal Essa* on his behalf after his death. This argument is canvassed on the basis that the Tenancy Agreements entered into with the Defendants are allegedly executed by *Faisal Essa* as the Constituted Attorney of *Sheikh Saad* and since *Sheikh Saad* had already expired, the Power of Attorney given by *Sheikh Saad* to *Faisal Essa* had automatically come to an end. There are other circumstances that are also set out in the plaint to justify the case

of the Plaintiff that the so-called Tenancy Agreements entered into by *Faisal Essa* with Defendant Nos. 1, 2 and 3 (in relation to their respective premises) are forged and fabricated and that the rent receipts also in relation to these Tenancies are also false and fabricated. To substantiate the case of the Plaintiff that *Faisal Essa* was in possession of the premises described hereinabove till 6th May, 2013 (when he left for Kuwait), the Plaintiff has relied upon a visit by one Mr. Fahad M. Al-Ajmi, on 17th March 2013 who allegedly inspected the premises and took photographs; the said Fahad M. Al-Ajmi engaged services of a Valuer [E. V. Lokhandwala & Associates] who valued the premises and that the Valuation Report in the paragraph titled “VALUATION OF OWNER OCCUPIED PORTION” clearly mentions that the owner (the Plaintiff) occupied one garage, portion of the built up area of the 5th floor (6533 sq.ft.) and the 6th floor built up area (928 sq.ft.).

54. The other circumstances to substantiate the possession of the Plaintiff, it is stated in the plaint, that the electricity meter of these premises stand in the name of the Plaintiff and various tenants of the building have also filed affidavits (**Exhibits Y-1 to Y-16** to the plaint) stating that *Faisal Essa* was in possession of the premises described hereinabove till 6th May 2013.

55. On reading the plaint, at least *prima facie*, it is clear that the Plaintiff has approached this Court with a specific case that the Defendants, in connivance with each other, forcibly entered into (i) *Flat No. 21* [on the 5th floor]; (ii) *the Ground Floor Premises* [next to Flat No.1]; (iii) *the Sixth Floor Premises* [adjacent to the terrace]; and *the Parking Garage* [of 225 sq.ft.] after 6th May, 2013 and have fabricated the Tenancy Agreements as well as the rents receipts to somehow legitimize their illegal occupation and possession of these premises. What is important to note is that nowhere in the plaint, has the Plaintiff come with the case that *Faisal Essa* had no authority to create tenancies in respect of any premises in the building called *Al-Sabah Court* because his authority came to an end on the death of *Sheikh Saad* or the death of *Sheikh Abdullah*.

56. On the basis of these pleadings, I shall now examine whether the Plaintiff has made out a *prima facie* case, as to whether the Tenancy Agreements entered into by *Faisal Essa* in favour of Defendant Nos. 1, 2 and 3 are forged and fabricated. If *prima facie*, I come to the conclusion that this is in fact the case, then Mr. Jagtiani would be fully justified in contending that this is a fit case for not only appointing the Court Receiver but also directing the Defendants to pay compensation on account of their illegal occupation and possession of (i) *Flat No. 21* on the

5th floor [occupied by Defendant No.1]; (ii) *the Ground Floor Premises* next to Flat No.1 [occupied by Defendant No.2]; (iii) *the Sixth Floor Premises* adjacent to the terrace [occupied by Defendant No.3]; and *the Parking Garage* of 225 sq.ft. [in possession of Defendant No.1].

57. Having said this, I shall now first examine whether the Tenancy Agreement entered into with Defendant No.2 is forged and fabricated. The premises of which Defendant No.2 is in possession, are *the Ground Floor Premises* next to Flat No.1 [admeasuring approximately 270 sq.ft]. The Tenancy Agreement entered into by *Faisal Essa* with Defendant No.2 is dated 31st January 2013. To refute the case of the Plaintiff, Defendant No.2 has filed three Affidavits-in-Reply dated 24th March 2014, 25th July 2014, and 22nd June 2022 respectively. In all these Affidavits, Defendant No. 2 has set out his defence in great detail, especially as to manner in which the Tenancy Agreement dated 31st January 2013 came to be executed between *Faisal Essa* and Defendant No.2. It is specifically stated by Defendant No.2 [in his Affidavit dated 25th July 2014] that he is an estate broker who came into contact with *Faisal Essa* and Defendant No.1. Since he was in need of a small office for his business in South Mumbai, *Faisal Essa* offered him *the Ground Floor Premises* and put him in possession thereof on 1st August 2012. *Faisal Essa* also promised that he would execute and register a Tenancy

Agreement at a later date. In the said Affidavits, Defendant No. 2 has specifically stated that on or about 30th January 2013, *Faisal Essa*'s son *Basar*, called him and Defendant No.3 to his residence and requested them to sign the original Tenancy Agreements already prepared on the same/identical terms as that of other Tenancy Agreements executed by *Faisal Essa*. It is thereafter stated that at this time, Defendant No.2 signed and handed over a cheque of Rs.9,000/- on account of advance payment of rent upto 31st December 2013. It is thereafter stated that on the next date i.e. 31st January 2013, the said *Basar* once again called Defendant No.2 to his residence when he was given the said Tenancy Agreement which was signed by *Faisal Essa* along with the rent receipt for payment of advance rent. It is specifically stated in the Affidavit that when *Basar* handed over the signed Tenancy Agreement to Defendant No.2, the said *Basar* informed Defendant No.2 that the said Tenancy Agreement has been signed and executed by *Faisal Essa* in hospital before a Notary Mr. M. N. Naqvi. This is the specific case with which Defendant No.2 has approached this Court. This case was put forward by Defendant No.2 as far back as on 25th July 2014. Despite this, there is no response to this clear case of Defendant No.2 by the Plaintiff till date. The Plaintiff has even failed to so much as deny the aforesaid facts by filing an Affidavit-in-Rejoinder. All these facts have gone uncontroverted. Pertinently, *Faisal Essa* passed away in the year 2016 and was very much

alive at the time of filing of the above Suit as well as on 25th July 2014, when the above Affidavit was filed. For 8 years, the Plaintiff has chosen not to file any Affidavit-in-Rejoinder and neither has any Affidavit been filed by *Faisal Essa* controverting these facts.

58. Despite this, the case of Defendant No.2 does not stop here. It is the case of Defendant No.2 that Defendant No.2 was put in possession of *the Ground Floor Premises* by *Faisal Essa* in August 2012 and thereafter a Tenancy Agreement dated 31st January 2013 was executed between Defendant No.2 and *Faisal Essa*. The Tenancy Agreement dated 31st January 2013 entered into with Defendant No.2 by *Faisal Essa* is produced by Defendant No.2 in its reply dated 22nd June 2022. A perusal of the execution page of the said Tenancy Agreement discloses that the same has been signed by *Faisal Essa* and Defendant No.2 who have also affixed their respective photographs thereon. This page also bears the stamp and signature of a Notary *M. N. Naqvi* and the signature and stamp of an advocate of this Court, *Mutavalli G. M.* along with the words “*IDENTIFIED BY ME*”. The stamp of Mr. Naqvi as well as the stamp of Mr. Mutavalli G. M. on the Tenancy Agreement executed with Defendant No.2 is of some importance because the Plaintiff has herself relied upon 16 Affidavits filed by the Tenants of the building [Exhibits Y-1 to Y-16 of the plaint] and which the Plaintiff says are

genuine affidavits. A perusal of the signature pages of these affidavits discloses that 14 out the 16 affidavits [**Exhibits Y-1 to Y-13 & Y-16**] bear the stamp and signature of the Notary *M. N. Naqvi* and the signature and stamp of an advocate of this Court, *Mutavalli G. M.* along with the words "*IDENTIFIED BY ME*". Apart from these affidavits, [which are annexed at **Exhibits Y-1 to Y-13 & Y-16** of the plaint], during the course of the hearing, Defendant No.2 also tendered across the bar a deed of retirement of trustees dated 13th July 2011 under which *Faisal Essa* was confirmed as one of the surviving trustees of Helal Bin Fajhan Trust. To this deed of retirement, a Power of Attorney dated 8th June 2011 given by one *Mahed Bin Helal Bin Fajhan* to *Faisal Essa* was also annexed. Perusal of this Power of Attorney also discloses that this document also bears the Notarial stamp of *M. N. Naqvi*. In my opinion, at least *prima facie*, it is not a mere co-incidence that 14 out of the 16 affidavits executed by the Tenants in August 2013 [annexed at **Exhibits Y-1 to Y-13 & Y-16**] on the one hand and the Tenancy Agreement [dated 31st January 2013] entered into with Defendant No.2 on the other, bear (i) the signature and Notarial stamp of *M. N. Naqvi* and (ii) the signature and stamp of an advocate of this Court, *Mutavalli G. M.* along with the words "*IDENTIFIED BY ME*". When one looks at these documents together, *prima facie*, it appears that far from making out a case of forgery, the Tenancy Agreement dated 31st January 2013 in fact emanated from *Faisal*

Essa himself.

59. When faced with these facts, Mr. Jagtiani, the learned senior Counsel appearing on behalf of the Plaintiff, sought to contend that the stamps of Mr. Naqvi and Mr. Mutavalli on the Tenancy Agreement dated 31st January 2013 were forged and fabricated by Defendant No.2. I find this argument to be one of desperation. Firstly, no such case is pleaded by the Plaintiff, either in the plaint, or by filing any Affidavit-in-Rejoinder to the Affidavits filed by Defendant No.2. Secondly, and more importantly, Defendant No.2 had annexed the said Tenancy Agreement as Exhibit “A” to his RAD Suit No. 606 of 2013 before the Hon’ble Small Causes Court at Mumbai seeking inter-alia a declaration of his tenancy rights in respect of *the Ground Floor Premises*. The plaint [in the aforesaid Suit] was affirmed on 1st April 2013 and the aforesaid Suit was filed on 3rd April 2013, which is well before any of the Affidavits [Exhibits Y-1 to Y-16] were executed by the Tenants. In fact, the Affidavits annexed at **Exhibits Y-1 to Y-13 & Y-16** were executed only sometime in or about August 2013 and were brought to Defendant No. 2’s knowledge only after being served with the Plaintiff in this Suit [which itself was filed only in December 2013]. It is thus inconceivable that Defendant No.2 would have known that the Plaintiff would firstly file the above Suit [in the future] and in such Suit, would rely upon the Affidavits of the Tenants

and further would get such Affidavits Notarised by Mr. Naqvi and identified by Mr. Mutavalli. Mr. Ardeshir was correct in his submission when he submitted that there was no occasion for Defendant No.2 to forge the stamp of Mr. Naqvi or Mr. Mutavalli on the said Tenancy Agreement, either in January 2013 [when the Tenancy Agreement was executed] or in April 2013 when the said Tenancy Agreement was produced before the Hon'ble Small Causes Court at Mumbai [as Exhibit "A" to RAD Suit No. 606 of 2013]. It was only after December 2013 that Defendant No.2 learnt that the Plaintiff has procured Affidavits from the Tenants of the said building bearing the stamp of Mr. M. N. Naqvi and Mr. Mutavalli G. M. The Affidavits relied upon by the Plaintiff [annexed at Exhibits **Y-1 to Y-13 & Y-16** to the Plaintiff] and which have the same stamp and signature of the Notary *M. N. Naqvi* and the signature and stamp of an advocate of this Court, *Mutavalli G. M.* along with the words "*IDENTIFIED BY ME*", were not even in existence at the time when the Tenancy Agreement dated 31st January 2013 was executed by *Faisal Essa* in favour of Defendant No.2. The facts mentioned above in fact *prima facie* establish that *Faisal Essa* used the services of the advocates Mr. Naqvi & Mr. Mutualvalli regularly. The Tenancy Agreement executed in favour of Defendant No.2 also has the signature and Notarial stamp of Mr. Naqvi who is a notary frequently used by *Faisal Essa*. I say this because 14 out of the 16 Affidavits executed by the Tenants [**Exhibits**

Y-1 to Y-13 & Y-16 to the plaint] and relied upon by the Plaintiff, also have the Notarial stamp of Mr. Naqvi. Admittedly, these affidavits were prepared by *Faisal Essa*'s attorneys and Notarised by Mr. Naqvi. Similarly, 14 out of the 16 Affidavits of the Tenants [**Exhibits Y-1 to Y-13 & Y-16**] also have the signature and stamp of Mr. Mutavalli. All this material, at least *prima facie*, would show that the Tenancy Agreement dated 31st January 2013 entered into by *Faisal Essa* with Defendant No.2 is not forged and fabricated. I say this because *prima facie* it appears that the said Tenancy Agreement emanated from *Faisal Essa* himself.

60. This does not stop here. I find considerable force in the argument of Mr. Ardeshir that the Tenancy Agreement dated 31st January 2013 is a genuine document as the same is also corroborated by Defendant No. 2's banks statements. At clause 3 of the Tenancy Agreement, *Faisal Essa* and Defendant No. 2 [being the parties thereto] recorded that Defendant No.2 had paid a sum of Rs. 9,000/- to *Faisal Essa* by a post-dated cheque No.098983 dated 1st February 2013 drawn on Axis Bank, Andheri (West) Branch, on account of advance rent for the period of 12 months from January 2013 to December 2013. Clause 3 of the Tenancy Agreement is reads thus:

"3. The landlord has created tenancy of the tenanted premises and confirm having issued separate rent receipt for standard rent and permitted increase with effect from 1.8.2012 to the

name of New Tenant. The Landlord confirm that New Tenant has paid Rs.9,000/- by post dated cheque No. 098983 dated 01.02.2013 drawn on Axis Bank, Andheri (West) Branch on account of advance rent of the tenanted premises for subsequent period of 12 months from January, 2013 to December, 2013 (both inclusive). ”

(emphasis supplied)

61. Defendant No.2 has produced his bank statements, which shows that cheque No. 098983 dated 1st February 2013 is encashed by *Faisal Essa* on 2nd February 2013. It is an admitted position that Defendant No.2 had no prior relationship with the Plaintiff or *Faisal Essa* and therefore had no occasion to pay *Faisal Essa* any money other than under the said Tenancy Agreement. *Faisal Essa* consequently had no occasion to accept any money from Defendant No.2, except towards rent under the said Tenancy Agreement. This, to my mind, further corroborates the submission of Defendant No.2 that *prima facie* the Tenancy Agreement executed in favour of Defendant No.2 by *Faisal Essa* is a genuine document which was in fact acted upon by *Faisal Essa* who accepted the consideration mentioned therein [of Rs.9,000/-]. There is no explanation coming forth from the Plaintiff either in the pleadings or during the course of arguments, as to why *Faisal Essa* encashed the cheque of Rs.9,000/- from Defendant No.2 in February 2013, when Defendant No.2, according to the Plaintiff, is a rank trespasser who trespassed into *the Ground Floor Premises* only after 6th May 2013.

Admittedly, there is no other transaction between the Plaintiff/*Faisal Essa* and Defendant No.2. There is no conceivable reason as to why Defendant No.2 would pay the Plaintiff/*Faisal Essa* Rs.9,000/- by cheque and which was encashed by *Faisal Essa* on 2nd February 2013. All these facts have been specifically stated by Defendant No.2 at paragraph 21 of its reply dated 22nd June 2022 and not controverted by Plaintiff.

62. Even as far as the contention of the Plaintiff that the rent receipt issued to Defendant No.2 [in relation to *the Ground Floor Premises*] is forged and fabricated, I find that no such case is made out. It is the case of the Plaintiff that Defendant No.2, acting in collusion with Defendant Nos. 1 and 3, took illegal possession of *the Ground Floor Premises* immediately after 6th May 2013 when *Faisal Essa* left for Kuwait. It is also the case of the Plaintiff that all the blank receipts, signature stamps, and seals etc were in *the Ground Floor Premises* and *the Sixth Floor Premises* which were in possession of *Faisal Essa* till he left for Kuwait on 6th May 2013. In contrast, it is the case of Defendant No.2 that he was put in possession of *the Ground Floor Premises* by *Faisal Essa* on 1st August 2012. To protect his tenancy rights, Defendant No.2 filed RAD Suit No. 606 of 2013 before the Hon'ble Small Causes Court at Mumbai in April 2013. Annexed to this Suit was the rent receipt and the Tenancy Agreement issued/executed by *Faisal Essa* in Defendant

No. 2's favour. This means that in April 2013 Defendant No. 2 had produced his Tenancy Agreement and the rent receipt in relation thereto before the Hon'ble Small Causes Court at Mumbai. However, it is the case of the Plaintiff that Defendant No.2 only entered/trespassed upon *the Ground Floor Premises* on or after 6th May 2013 [i.e. after *Faisal Essa* left India for Kuwait]. It is the pleaded case of the Plaintiff that immediately after 6th May 2013, Defendant No.2 took illegal and forcible possession of *the Ground Floor Premises*, and in collusion with Defendant No.1, also took possession of the rent books, relevant bills, seals, signature stamps and all other documents pertaining to *Al-Sabah Court*. Therefore, according to the pleaded case of the Plaintiff, the blank rent receipts and all other documents came in possession of Defendant No.2, along with Defendant Nos. 1 and 3, sometime after 6th May 2013. This case of the Plaintiff falls to the ground when one sees that Defendant No.2 had already annexed the rent receipt issued to him by *Faisal Essa* in his RAD Suit No.606 of 2013 filed in the Small Causes Court on 3rd April 2013. If according to the Plaintiff, Defendant No.2 only got access to the blank rent receipts and documents after 6th May 2013, and thereafter forged the same, Defendant No.2 could never have annexed the rent receipt issued to him to his Suit filed in the Small Causes Court being RAD Suit No. 606 of 2013, in April 2013. There is absolutely no explanation by the Plaintiff either in pleadings or in arguments as to how Defendant No.2 came into

possession of the rent receipt issued to him, prior to 6th May 2013. *Prima facie*, therefore, the case pleaded by the Plaintiff, at the interim stage does not inspire confidence. At the interim stage, I find that Defendant No.2 has in fact been able to *prima facie* establish that the Tenancy Agreement dated 31st January 2013 executed by *Faisal Essa* in favour of Defendant No.2 is not a forged and fabricated document and that in fact Defendant No.2 was put in possession of *the Ground Floor Premises* by *Faisal Essa* acting as the agent of the Plaintiff. I must again mention that it is not the case of the Plaintiff that *Faisal Essa* never had the authority to enter into any Tenancy Agreement for and on behalf of the Plaintiff/owners of the building called *Al-Sabah Court*. The Plaintiff has come to Court with a specific case that the Tenancy Agreements executed in favour of the Defendants are forged and fabricated. In these circumstances, I find that no case is made out for appointment of the Court Receiver in relation to *the Ground Floor Premises* or for any direction against Defendant No.2 to pay any mesne profit to the Plaintiff.

63. Having dealt with the issue of forgery and fabrication of the Tenancy Agreement entered into by *Faisal Essa* with Defendant No.2, I shall now deal with the issue of forgery and fabrication of the Tenancy Agreement dated 31st January 2013 entered into by *Faisal Essa* with Defendant No.3. Defendant No.3 claims to be a tenant of *the Sixth Floor*

Premises [adjacent to the terrace] admeasuring approximately 300 sq.ft. by virtue of a Tenancy Agreement dated 31st January 2013. Defendant No. 3 has filed an Affidavit-in-Reply dated 9th March 2015. In this affidavit, [paragraph 32 thereof] Defendant No.3 has specifically stated that *Faisal Essa* inducted Defendant No.3 in *Sixth Floor Premises* [adjacent to the terrace] voluntarily and accepted the rent in relation thereto. This statement of Defendant No.3, like the statements made by Defendant No.2, is not controverted by the Plaintiff by filing any Affidavit-in-Rejoinder. This apart, I find that even the Tenancy Agreement executed by *Faisal Essa* in favour of Defendant No.3 is identical to the Agreement executed by *Faisal Essa* with Defendant No.2. In fact, both the Agreements were executed on the same day, namely 31st January 2013. Even the execution page of the Tenancy Agreement with Defendant No. 3 bears the signature and stamp of the Notary *M. N. Naqvi* and the signature and stamp of an advocate of this Court, *Mutavalli G. M.* along with the words “*IDENTIFIED BY ME*”. Like in the case of Defendant No.2, this would *prima facie* show that even the Tenancy Agreement executed by *Faisal Essa* with Defendant No.3 actually emanated from *Faisal Essa*. I say this because as mentioned earlier, Mr. Naqvi was a notary who was regularly used by *Faisal Essa*, and like Defendant No.2, Defendant No.3 had no past dealings with *Faisal Essa*. In these circumstances, for the reasons already recorded as to why I

prima facie found that the Tenancy Agreement entered into with Defendant No.2 is not forged and fabricated, I *prima facie* find that the Tenancy Agreement entered into with Defendant No.3 is also not forged and fabricated. I must mention that even Defendant No.3 had filed RAD Suit No. 607 of 2013 in the Small Causes Court at Mumbai in April 2013. In fact, the case of Defendant Nos. 2 and 3 are almost identical. I, therefore, find that no case is made out for the appointment of the Court Receiver in relation to *Sixth Floor Premises* [adjacent to the terrace] which is in occupation and possession of Defendant No.3, and neither any case is made out for directing Defendant No.3 to pay any mesne profit to the Plaintiff in relation to *Sixth Floor Premises*.

64. This now leaves me to consider whether the Tenancy Agreement dated 30th October 2012 entered into by *Faisal Essa* with Defendant No.1 is a forged and fabricated document. The case of Defendant No.1 is slightly different from that of Defendant Nos. 2 and 3 in as much as the Tenancy Agreement entered into with Defendant No.1 is not Notarised, like the Tenancy Agreements entered into with Defendant Nos. 2 and 3. Defendant No. 1 is in possession and occupation of *Flat No.21* on the 5th floor of the building called *Al-Sabah Court* by virtue of the Tenancy Agreement dated 30th October 2012. Defendant No.1 has filed four affidavits in this Court dated 25th July 2014, 29th July

2015, 19th August 2017, and 17th June 2022 respectively. Certain documents were also tendered during the course of hearing. The case of the 1st Defendant is set out in great detail in these affidavits. To put it in a nutshell, in these affidavits, the 1st Defendant has stated that he entered into a Tenancy Agreement dated 24th October 2008 with *Faisal Essa* in respect of Flat No.3 on the 1st floor of the building called *Al-Sabah Court*. The said Agreement was executed by *Faisal Essa* as the landlord in which it was asserted that *Sheikh Saad* was the owner of the said premises. The rent receipts issued by *Faisal Essa* pertaining to these premises as well as the other rent receipts issued by *Faisal Essa* in respect of the other premises in the said building bear the signature stamp of *Faisal Essa* which indicates that *Faisal Essa* was the Constituted Attorney of *Sheikh Saad*. It is thereafter stated that the brother of Defendant No.1, namely, Mr. Sandeep Punamiya, also entered into a Tenancy Agreement dated 1st April 2009 in respect of Flat No. 20 on the 5th floor. This Agreement is similar to the Tenancy Agreement dated 24th October 2008 entered into with Defendant No.1 in respect of Flat No.3. Both the aforesaid Agreements were executed by *Faisal Essa* after the death of *Sheikh Saad* and neither of these Agreements have been disputed by the Plaintiff. Similarly, other persons in the building *Al-Sabah Court* also acquired premises after the death of *Sheikh Saad* under various Tenancy Agreements which were executed by *Faisal Essa* on the basis that he was

the Power of Attorney Holder of *Sheikh Saad* and there is no dispute raised by the Plaintiff in relation to these Agreements as well. Once such Agreement is a Tenancy Agreement dated 16th February 2010 executed between *Faisal Essa* and one Mr. Pradeep Bansal for Flat No.13 on the 2nd floor of the building called *Al-Sabah Court*.

65. It is thereafter stated that since Defendant No.1 required further premises, *Faisal Essa* pointed out that *Flat No.21* [on the 5th floor] was lying locked for many years and could be given on a tenancy basis to Defendant No.1 along with a garage admeasuring 225 sq.ft. Since Defendant No.1 agreed to take the said premises on a tenancy basis, Defendant No.1 gave two cheques bearing No. 387325 and 385341 both dated 19th September 2012 to *Faisal Essa* and which were encashed by *Faisal Essa* on 20th September 2012. Thereafter, a Tenancy Agreement dated 30th October 2012 was executed between *Faisal Essa* and Defendant No.1 in relation to *Flat No.21*. Upon execution of the Tenancy Agreement, the keys of *Flat No.21* were handed over to Defendant No.1. In the replies filed by Defendant No.1, it is stated that immediately thereafter, since *Faisal Essa* started demanding more money, Defendant No.1 was compelled to file RAN Application No. 47 of 2012 seeking fixation of standard rent and protection of his tenancy rights in the said RAN proceedings. The Tenancy Agreement and the rent receipt issued in

relation to *Flat No.21* were also annexed to the RAN Application. Apart from filing the RAN proceedings, Defendant No.1, on 22nd January 2013, also filed RAD Suit No.174 of 2013 for declaration of his tenancy rights. This Suit was finally decreed on 9th May 2013.

66. It is further stated in these affidavits that Defendant No.1 also filed a criminal complaint in the Magistrate's Court regarding some threats given by *Faisal Essa* leading to an issuance of an order under Section 156(3) of the Cr.P.C dated 18th February 2013. Pursuant to this order, an FIR came to be lodged on 4th March 2013. During the investigation, a panchnama was prepared on 24th March 2013 by the authorities which reflects that Defendant No.1 was in possession of *Flat No.21*. These proceedings were subsequently closed pursuant to an order of this Court holding that the disputes were essentially of a civil nature.

67. It is thereafter stated that *Faisal Essa* himself initiated criminal action against the Defendants and filed Criminal Writ Petition No. 2663 of 2013 seeking investigation by the CBI or the CID into the matter of the properties of the Royal Family of Kuwait, register an FIR, and submit a report. This Court directed *Faisal Essa* to approach the appropriate criminal Court which may consider his request for transfer of the investigation. Accordingly on 15th January 2014, *Faisal Essa* filed

a criminal complaint against Defendant No.1 in which an investigation was ordered. The investigation was thereafter undertaken by the CID which was apparently at the request of *Faisal Essa*. The CID carried out a detailed investigation and found that there was no case of either forgery or criminal trespass. The CID, on taking a report from the State Agency, found that the signature of *Faisal Essa* on the Tenancy Agreement was not forged. The CID however filed a chargesheet, both against *Faisal Essa* and Defendant No.1 alleging that they had colluded together to cheat the owner. Defendant No.1 challenged the chargesheet and as against Defendant No.1 further proceedings and the said chargesheet were stayed by this Court by order dated 28th July 2015 passed in Criminal Application No. 726 of 2015. *Faisal Essa* chose not to challenge the chargesheet. These facts, as pleaded by Defendant No.1 in its various affidavits, have not been controverted by the Plaintiff or by *Faisal Essa* by filing any Affidavit in the present proceedings.

68. Be that as it may, I shall now examine whether the Plaintiff has made out a strong *prima facie* case that the Tenancy Agreement dated 30th October 2012 entered into by *Faisal Essa* with Defendant No.1 [in relation to *Flat No.21*] is forged and fabricated. To substantiate the forgery, the Plaintiff has relied upon a report of a private handwriting expert produced at **Exhibit “G”** to the plaint. The plaint states that the

handwriting expert compared the signature of *Faisal Essa* on the Tenancy Agreement with the actual signature of Mr. Faisal Essa Alyousuf Al-Essa as can be seen from the stamp of the signature of *Faisal Essa* and came to the conclusion that the signature of *Faisal Essa* therein is forged and fabricated and does not even closely resemble his actual signature. However, it has been pointed to me, and which is not disputed by the Plaintiff, is that the handwriting expert did not have the original Tenancy Agreement nor was any original signature specimen of *Faisal Essa* provided to the handwriting expert. There is nothing on record to show that the Plaintiff or *Faisal Essa* made any effort to give the handwriting expert access to the original signature specimens of *Faisal Essa*. It appears that the handwriting expert has prepared the said report [Exhibit G to the plaintiff] based on comparing the signature of *Faisal Essa* on a photocopy of the Tenancy Agreement and other writing/copies of *Faisal Essa*'s signature. This being the factual position, it would be highly dangerous to merely rely upon this report to come to the conclusion that the Tenancy Agreement dated 30th October 2012 entered into with Defendant No.1 is a forged and fabricated document.

69. In contrast to this, Defendant No.1 has produced a report of the hand writing expert wherein he has compared the actual signatures and initials of *Faisal Essa* on the original Tenancy Agreement dated 30th

October 2012 as against the undisputed original Tenancy Agreement dated 24th October 2008 also entered into by *Faisal Essa* with Defendant No.1 in relation to Flat No.3 on the 1st floor. The said report *inter alia* states that the signature of *Faisal Essa* on the Tenancy Agreement dated 30th October 2012 is genuine.

70. Apart from the report of the handwriting expert produced by Defendant No.1, on a criminal complaint filed by *Faisal Essa* against Defendant No.1 [in which an investigation was ordered], during investigation, the CID provided several documents including the Tenancy Agreement dated 30th October 2012 to the Additional Chief State Examiner of Documents, CID, Maharashtra State, Mumbai. Various documents were furnished to the expert. Sample signatures of *Faisal Essa* signed before the police authorities, were also taken and those were also forwarded to the expert. On the basis of these documents, the State Expert prepared his report. Relying upon this report, the CID in its final report/chargesheet *inter alia* came to the conclusion that though *Faisal Essa* had denied his signature on the Tenancy Agreement, during the course of investigation, it was disclosed that there was no uniformity in his signature. He was changing the manner and the style of the signature not only from one document to the other but has signed differently on different pages of the same document. The investigating authority came

to the conclusion that the admitted documents of *Faisal Essa* had different signatures. The investigating authority therefore came to the conclusion that the report of the Additional Chief State Examiner of Documents has put an end to the allegations of forgery. It is on this basis that the investigating authority *inter alia* came to the conclusion that the report of the handwriting expert confirmed that *Faisal Essa* had signed the Agreements deliberately in such a manner as would give the impression to others that the signatures had been forged. The investigating authority came to the conclusion that this was done in case the matter takes the different turn, and in such an event, *Faisal Essa* would have the option to deny his signatures. However, the report of the handwriting expert put an end to this malafide intention, was the conclusion of the investigating authority.

71. I must mention that it was pointed to me that despite the investigating authority coming to the conclusion that no case for forgery was made out, a charge of forgery was framed by the Court against Defendant No.1 under Sections 467 and 468 of the IPC. However, this charge being contrary to the findings in the chargesheet, Defendant No. 1 challenged the same in this Court expressly raising the contention that the framing of the charge of forgery was clearly contrary to the findings in the chargesheet and the State Examiner's Report. This Court by its

order dated 28th July 2015 passed in Criminal Application No. 726 of 2015 stayed the chargesheet as against Defendant No.1. Looking at these facts, at least at the interim stage, I am of the opinion that the Plaintiff has been unable to *prima facie* establish that the signature of *Faisal Essa* on the Tenancy Agreement dated 30th October 2012 is forged and fabricated.

72. The other contention raised by the Plaintiff [in the plaint] to support the case of forgery was that the Tenancy Agreement had been purportedly signed by *Faisal Essa* as a Power of Attorney Holder of *Sheikh Saad* who died in 2008. The plaint proceeds on the basis that the Tenancy Agreement dated 30th October 2012 was executed by *Faisal Essa* as the Constituted Attorney of *Sheikh Saad*. However, this is factually incorrect. A perusal of the Tenancy Agreement discloses that the same is executed with *Faisal Essa* as the Constituted Attorney of *Sheikh Abdullah* and not as the Constituted Attorney of *Sheikh Saad*. From the pleadings, it is clear that even the Plaintiff is confused between the names of *Sheikh Abdullah* and *Sheikh Saad* and this becomes apparent from paragraph 33(i) of the plaint. Be that as it may, the contention of the Plaintiff, in essence, is that *Faisal Essa* acted as the Constituted Attorney of a dead person which not possible and hence this would be a factor to show that the Tenancy Agreement dated 30th October 2012 is a forged and fabricated document. I am of the opinion that firstly, this cannot be a

factor which is an indicator of fabrication of the document. It is one thing to say that the document has not been signed by *Faisal Essa* [and which is the express case of the Plaintiff], and it is wholly another to say that he had no authority to sign the document because the person who had given the Power of Attorney had expired and hence the Power of Attorney came to an end on the death of the person giving the Power. What is also important to note is that the Plaintiff does not dispute that *Faisal Essa* did in fact have the authority to create tenancies in the building even after the death of *Sheikh Abdullah* and later *Sheikh Saad*. After the death of *Sheikh Saad*, the Plaintiff continued the authority of *Faisal Essa* to take care of the building called *Al-Sabah Court*. This is expressly admitted in paragraph 6 of the plaint. In fact, during arguments, a letter addressed by the Plaintiff to *Faisal Essa* [and which was annexed as an Exhibit to Criminal Writ Petition 2662 of 2013 filed by *Faisal Essa*], was produced wherein the Plaintiff requested *Faisal Essa* to continue administering property in Mumbai and thanked him for all the help and cooperation rendered. Subsequently, the Plaintiff formalized the authority of *Faisal Essa* by executing a Power of Attorney in favour of *Faisal Essa* in respect of the building *Al-Sabah Court*. These facts clearly reveal that even after the death of *Sheikh Abdullah* and thereafter *Sheikh Saad*, *Faisal Essa* continued to act in the name of *Sheikh Saad*, executed various documents, created tenancies, and even filed legal proceedings in the

name of *Sheikh Saad* which have not been disputed. This would, at least *prima facie*, show that the Plaintiff had no problem on *Faisal Essa* acting in the name of *Sheikh Saad* even after his death. The fact that *Faisal Essa* continued to act in the name of *Sheikh Saad* [even after his death on 13th May 2008] and which was accepted by the Plaintiff, is apparent from:-

- (a) The Tenancy Agreement dated 24th October 2008 executed by *Faisal Essa* in favour of Defendant No. 1 for Flat No.3.
- (b) The Tenancy Agreement dated 1st April 2009 executed by *Faisal Essa* in favour of Sandeep Punamiya [the brother of Defendant No.1] for Flat No. 20.
- (c) The Tenancy Agreement dated 16th February 2010 executed by *Faisal Essa* in favour of one Pradeepkumar Bansal for Flat No. 13.
- (d) The undisputed rent receipts issued to various tenants by *Faisal Essa* as the Constituted Attorney of *Sheikh Saad* for period after 13th May 2008 [the date *Sheikh Saad* passed away].
- (e) A suit filed in the year 2010 by *Faisal Essa* in the name of *Sheikh Saad* even after his death in which, a settlement was arrived at, and the Plaintiff has accepted the same.
- (f) Even after the filing of the present suit, correspondence

addressed to Defendant No. 1 and the other Tenants of *Al-Sabah Court* in the name of *Sheikh Saad*.

73. Looking at the conduct of the Plaintiff as set out above, at least *prima facie*, it appears that *Faisal Essa* had the authority of the owners of the building from time to time to create tenancies in favour of different people. Acting upon the same, *Faisal Essa*, from time to time, in fact created such tenancies. It is also an admitted position that the owners of the building *Al-Sabah Court* never came to India, and it was *Faisal Essa* alone who created the tenancies in the building and was dealing with the tenants.

74. Dr. Saraf is right in his contention when he submits that so far as the occupants of the building and other third parties were concerned, *Faisal Essa*, for all purposes, was the person who was representing the owners and had full authority to create tenancies, received rents, and do all dealings with the tenants and it is on this basis that everyone has proceeded. Dr. Saraf is correct that if the Court is satisfied, that *Faisal Essa* had the authority to represent the owners and create tenancies, then whether the Tenancy Agreement was signed by *Faisal Essa* as the Constituted Attorney of (i) *Sheikh Abdullah*; or (ii) *Sheikh Saad*; or (iii) the current owners of the building, really becomes irrelevant. This is because it is at least *prima facie* established that

whoever was the owner, he/she/they had authorised *Faisal Essa* to enter into and create tenancies, receive rents etc., and which authority is not disputed. *Faisal Essa* continued to represent to the world at large that he was authorised by the landlords to create tenancies etc and which representation even the Plaintiff does not deny till date. So long as *Faisal Essa* had the authority of the existing owners, the mere fact that the predecessor in title of the existing owners is mentioned in the Tenancy Agreement can *prima facie* neither render the Tenancy Agreement void or illegal nor is it any indication of forgery or fabrication.

75. Another important factor that militates against the case of the Plaintiff is that it is the case of the Plaintiff that the rent receipts relied upon by Defendant No.1 in respect of *Flat No. 21* are forged and fabricated. It is the express case of the Plaintiff that the blank rent receipts along with the seals and the signature stamps were kept in the office of the Plaintiff, which according to the Plaintiff, was run from *the Ground Floor Premises* and *the Sixth Floor Premises*. These premises were in the possession of the Plaintiff right up to 6th May 2013 [when *Faisal Essa* left for Kuwait]. It is the case of the Plaintiff that sometime after 6th May 2013, the servants/staff of the Plaintiff/*Faisal Essa* gave Defendant No.1 access to the offices of the Plaintiff with all the blank receipts and seals etc. Thus, according to the Plaintiff, Defendant No.1

got access to the blank receipt books, seals, signature stamps etc., only after 6th May 2013, and misused the same to create the forged and fabricated rent receipts in relation to *Flat No. 21*. In fact, in paragraph 32 of the plaint, it is stated that the rent receipts relied upon by Defendant No.1 are from the stolen blank rent bill book. According to the Plaintiff, as to why the rent receipts are fabricated is set out more particularly in paragraph 34 of the plaint. To put it in a nutshell, it is the case of the Plaintiff that the rent receipts are fabricated because:-

- (i) There is no bill number mentioned on the purported forged rent receipt.
- (ii) The same is not signed by *Faisal Essa*.
- (iii) No serial number is mentioned on the forged rent receipt.
- (iv) No receipt folio number is mentioned in the forged rent receipt.
- (v) A seal of the signature of *Faisal Essa* is affixed on the forged rent receipt, which seal was stolen by the Defendants from the office premises on the ground floor.
- (vi) The date on the subject rent receipt is handwritten as against the inserted by a stamp on the rent receipt annexed to the affidavits of the other tenants.

76. From the plaint, therefore it is clear that according to the Plaintiff, *Faisal Essa* was in possession of the office of the Plaintiff run

from *the Ground Floor Premises* and *the Sixth Floor Premises* and which housed the blank rent receipts along with the seals and the signature stamps, until 6th May 2013, when he left for Kuwait. It is the specific case of the Plaintiff that the Defendants, with the help of the staff of *Faisal Essa*, gained access to *the Ground Floor Premises* and *the Sixth Floor Premises* and stole the blank rent bill book, seals, signature stamps etc., immediately after 6th May 2013 and thereafter hatched the criminal conspiracy to usurp the valuable property of the Plaintiff. At least *prima facie*, I find this case to be incorrect. I say this because on 12th December 2012, [much prior to 6th May 2013] Defendant No.1 filed before the Small Causes Court at Mumbai RAN Application No. 47 of 2012 for fixation of standard rent. To this Application, the disputed rent receipt dated 30th October 2012 is annexed at Exhibit B. If in fact, the case of the Plaintiff is to be believed that Defendant No.1 got access to the blank receipt books, seals, signature stamps etc., only immediately after 6th May 2013, I fail to understand how Defendant No.1 could have produced the rent receipts in judicial proceedings on 12th December 2012. It does not stop here. On 12th February 2013, Defendant No.1 filed a complaint against *Faisal Essa* before the Additional Chief Metropolitan Magistrate. To this complaint also the subject rent receipt was annexed. Apart from this, on 22nd January 2013, Defendant No.1 also filed RAD Suit No. 174 of 2013 before the Small Causes Court for a declaration of his tenancy rights to which

the subject rent receipt is again annexed. When one looks at these facts, the entire case of the Plaintiff that the blank receipt books, seals, signature stamps etc. were stolen by Defendant No.1 in connivance with Defendant Nos. 2 and 3 immediately after 6th May 2013 and were thereafter fabricated, clearly falls to the ground. Once it is demonstrated that the rent receipts were in existence much prior to 6th May 2013, the entire case of the Plaintiff that the blank receipt books, seals, signature stamps etc. was stolen after *Faisal Essa*'s departure for Kuwait on 6th May 2013 and that subject rent receipts are created from the stolen rent receipts book to somehow legitimize Defendant No.1's possession of *Flat No.21* wholly collapses. This is yet another factor which would militate against the case of the Plaintiff that the Tenancy Agreement dated 30th October 2012 is a forged and fabricated document. I must mention that Defendant No.1 has categorically stated in its pleadings that the rent receipt was issued for *Flat No. 21* against a cheque of Rs.50,000 towards rent and which was duly deposited by *Faisal Essa*. In fact, this is also recorded in the supplementary statement of Shri Sayed Mohammad Qadri dated 21st January 2013 recorded before the CID, Mumbai. There is no Affidavit-in-Rejoinder filed by the Plaintiff controverting these facts.

77. I would fail in my duty to mention that Mr. Jagtiani, the

learned senior counsel appearing on behalf of the Plaintiff, when faced with the incriminating material of the investigating authority including the statements of various persons recorded by the CID, in the course of arguments raised an objection that the chargesheet and the statements made to the police cannot be looked at by this Court under Section 162 of the Cr.P.C. To put in a nutshell, it was contended that statements made to the police officer in the course of an investigation, cannot be relied upon in the present proceedings. I am afraid this argument proceeds completely on a wrong premise. Section 162 falls under chapter XII of the Cr.P.C which relates to information to the police and their powers to investigate. Section 162 inter-alia provides that no statement made by any person to a police officer in the course of an investigation under chapter XII, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. For the sake of convenience, Section 162 is reproduced hereunder:-

“162. Statements to police not to be signed: Use of statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such

statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

78. What Section 162 bars is the use of any statements made before a police officer in the course of an investigation under chapter XII, whether recorded in a police diary or otherwise. However, by the express terms of this Section, this bar is applicable only when such statement is sought to be used at any enquiry or trial in respect of any offence under investigation at the time when such statement was made. This is of course subject to what is provided in Section 162. If the statement made

before a police officer, in the course of an investigation under chapter XII is sought to be used in any proceeding other than an enquiry or trial or even at an enquiry or trial but in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This Section has been enacted for the benefit of the accused and is intended to protect the accused against the use of statement of witnesses made before the police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Protection against the use of the statement made before the police during investigation, is, therefore, granted to the accused by stipulating that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the Section, at any enquiry or trial in respect of the offence which was under investigation at the time when the statement was made. This protection, and which is given to the accused, can certainly not bar the Court from looking at the statements made before the police officer in civil proceedings so long as it is relevant under Indian Evidence Act. The interpretation of Section 162 which I have taken, is supported by a decision of the Hon'ble Supreme Court in the case of **Khatri & Ors. vs. State of Bihar [(1981) 2 SCC 493]**. In this decision, it is categorically held that Section 162 is enacted for the benefit of the accused and the bar created by the Section is a limited one and has

no application to a civil proceeding or a proceeding under Article 32 or 226 of the Constitution of India. Paragraph 3 of this decision reads thus:

“3. Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition section and clause (g) of that section defines “inquiry” to mean “every inquiry, other than a trial conducted under this Code by a Magistrate or court”. Clause (a) of Section 2 gives the definition of “investigation” and it says that investigation includes “all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf”. Section 4 provides:

“4. (1) All offences under the Penal Code, 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

It is apparent from this section that the provisions of the Criminal Procedure Code are applicable where an offence under the Penal Code, 1860 or under any other law is being investigated, inquired into, tried or otherwise dealt with. Then we come straight to Section 162 which occurs in Chapter XII dealing with the powers of the police to investigate into offences. That section, so far as material, reads as under:

“162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the

Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act."

It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but, by the express terms of the section, this bar is applicable only where such statement is sought to be used "at any inquiry or trial in respect of any offence under investigation at the time when such statement was made". If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This section has been enacted for the benefit of the accused, as pointed out by this Court in *Tahsildar Singh v. State of U.P.* [AIR 1959 SC 1012 : 1959 Supp 2 SCR 875, 890 : 1959 Cri LJ 1231] it is intended "to protect the accused against the user of statements of witnesses made before the police during investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence". This Court, in *Tahsildar Singh case* [AIR 1959 SC 1012 : 1959 Supp 2 SCR 875, 890 : 1959 Cri LJ 1231] approved the following observations of Braund, J. in *Emperor v. Aftab Mohd. Khan* [AIR 1940 All 291 : 188 IC 649 : 41 Cri LJ 647] :

"As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths"

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in *Baliram Tikaram Marathe v. Emperor* [AIR 1945 Nag 1 : 46 Cri LJ 448 : 218 IC 294] that "the object of the section is to protect the accused both against overzealous police officers and untruthful witnesses". Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to

be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have taken this view and amongst them may be mentioned the decision of Jaganmohan Reddy, J. in *Malakala Surya Rao v.G. Janakamma* [AIR 1964 AP 198 : (1963) 2 Andh WR 485 : (1964) 1 Cri LJ 504] . The present proceeding before us is a writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their Fundamental Rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how Section 162 can be invoked by the State in the present case. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed in Order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule 10 lays down that at the hearing of the rule nisi, if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before, a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act."

(emphasis supplied)

79. In light of this authoritative pronouncement of the Hon'ble

Supreme Court, the contention of Mr. Jagtiani that this Court cannot look at the chargesheet or the statements made to the police officers because of the bar under Section 162 of the Cr.P.C, is wholly misplaced.

80. Having said this, I shall now decide whether the Plaintiff, *prima facie*, is able to establish that *Faisal Essa* was in possession of *Flat No.21* till 6th May 2013 when he left for Kuwait. To substantiate the case of the Plaintiff that *Faisal Essa* was in possession of *Flat No.21; the Ground Floor Premises and the Sixth Floor Premises* till 6th May 2013, the Plaintiff has relied upon the documents and the averments more particularly set out in paragraphs 52 to 61 of the plaint. The first document relied upon is the visit of Mr. Fahad M. Al-Ajmi to *Flat No.21* during March 2013 and the photographs taken by him. A document styled as an affidavit dated 15th July 2013 executed by Mr. Fahad M. Al-Ajmi is annexed at Exhibit “V” to the plaint. After going through this document, I find that the same does not appear to be an affidavit. It is not executed in India but executed abroad and it is neither notarised nor signed by before any consulate. More importantly, before the police authorities, though Mr. Fahad M. Al-Ajmi was listed as a witness, *Faisal Essa* made a statement that Mr. Fahad M. Al-Ajmi and even the Plaintiff herself, should not be called for investigation as they both are not concerned with the criminal case filed by *Faisal Essa* against Defendant

No.1. It is pertinent to note that in the case of criminal trespass filed by *Faisal Essa* against Defendant No.1, Mr. Fahad M. Al-Ajmi's statement was sought to be relied upon before the police authorities. Despite this, it was stated by *Faisal Essa* that the Plaintiff and Mr. Al-Ajmi had nothing to do with the matter. In such circumstances, in my opinion, it would be dangerous to place any reliance on this document at the interim stage as the same lacks credence. As far as the photographs taken by Mr. Al-Ajmi are concerned, they by themselves do not establish possession of *Faisal Essa*. Merely because Mr. Al-Ajmi was allowed to visit *Flat No.21* and take photographs, would not establish *Faisal Essa*'s possession, especially since Defendant No.1 admits that under the terms of the Tenancy Agreement as well as under the law, at the request of *Faisal Essa*, he was allowed to inspect *Flat No.21*.

81. The Plaintiff, to establish *Faisal Essa*'s possession of *Flat No.21; the Ground Floor Premises and the Sixth Floor Premises*, then relied upon a report of the valuer E. V. Lokhandwala and Associates. The report of the valuer can be found at Exhibit "S" to the plaint. From this report, it is suggested that the valuer inspected the premises in March 2013 on Al-Ajmi's instructions and thereafter confirmed that *Flat No.21; the Ground Floor Premises and the Sixth Floor Premises* were in the owner's possession. However, before the CID, the valuer's representative

made a statement that he had visited the building in the year 2005 and that he had prepared the valuation on that basis. He confirmed that the visit referred to in the report is a visit of 2005 and not of 2013, as was sought to be suggested. In a supplementary statement, the said representative confirmed that neither he nor anyone from his office visited in the building *Al-Sabah Court* in the year 2013. He clarified that the valuation report was prepared on the instructions of Mr. Fahad M. Al-Ajmi based on the data available with E. V. Lokhandwala and Associates from the site visit and valuation report of 2005. Once this is the statement recorded by the police on behalf of E. V. Lokhandwala and Associates, the reliance placed by the Plaintiff on the valuer's report, at least at the interim stage, loses its evidentiary value to prove that *Faisal Essa* was in possession of *Flat No.21; the Ground Floor Premises and the Sixth Floor Premises*, until 6th May 2013.

82. Even as far as the electricity meter is concerned, merely because the same stands in the name of the Plaintiff does not establish that the Plaintiff [through *Faisal Essa*] was in possession of the premises in question. In fact, the Plaintiff has not produced a single electricity bill which has been paid by the *Faisal Essa*/owner nor is there an averment that any such electricity bill for the premises [which form the subject matter of the Suit] were paid by the Plaintiff.

83. The next set of documents relied upon by the Plaintiff to establish her possession of *Flat No.21; the Ground Floor Premises* and *the Sixth Floor Premises*, were the affidavits filed by the tenants and annexed at Exhibits “Y-1” to “Y-16” to the plaint. A perusal of the said affidavits discloses that all of them are verbatim. Each of the tenants claim to have made *Faisal Essa* in all the three premises till the last week of April 2013 until he left for Kuwait. This itself, without anything more and at least at the interim stage, would cast a doubt on the veracity of these affidavits. *Prima facie* it would appear that these affidavits have been prepared by *Faisal Essa* himself and then the tenants have been called upon to execute these affidavits. This is also clear from the fact that 14 out of these 16 affidavits have the notary stamp of Mr. M. N. Naqvi and the stamp of an advocate Mutavalli G. M. with the words “IDENTIFIED BY ME”. This apart, in the investigation carried out by the CID, most of the tenants gave statements before the police by stating that they did not know the contents of these affidavits. The statement recorded was that the affidavits were prepared by *Faisal Essa* and they were merely told that these affidavits had something to do with the building *Al-Sabah Court* and the tenants signed the same without knowing the contents. Various tenants even withdrew their affidavits before the Magistrate. I, therefore, find that even these affidavits, at least

at the interim stage, do not have great evidentiary value to support the case of the Plaintiff that *Faisal Essa* was in possession of *Flat No.21; the Ground Floor Premises and the Sixth Floor Premises* until 6th May 2013 when he departed for Kuwait.

84. In view of the discussion in the preceding paragraphs and when one looks at the overall facts and circumstances, at least at the interim stage, I am of the opinion that the Plaintiff has failed to establish that the Tenancy Agreement dated 30th October 2012 entered into between Defendant No.1 and *Faisal Essa* is forged and fabricated and neither have they been able to establish that *Faisal Essa* was in possession of *Flat No.21; the Ground Floor Premises and the Sixth Floor Premises* in the building called *Al-Sabah Court*. This becomes even more significant when one takes into consideration that it is the case of the Plaintiff that the mastermind behind this entire forgery was Defendant No.1 and Defendant Nos. 2 and 3 were only his stooges. I have already discussed in detail earlier as to why I have come to the conclusion that the Tenancy Agreements executed by *Faisal Essa* which Defendant Nos. 2 and 3 *prima facie* appeared to be genuine and not forged and fabricated. I am therefore of the opinion that the Plaintiff has been unable to *prima facie* establish that the Tenancy Agreement dated 30th October 2012 entered into with Defendant No.1 is a forged and fabricated

document.

85. Having come to the conclusion that the Plaintiff has not been able to establish even *prima facie* that the Tenancy Agreements entered into by *Faisal Essa* with Defendant Nos.1, 2 and 3 respectively, are forged and fabricated, there is no question of either appointing a Court Receiver in relation to *Flat No.21; the Ground Floor Premises and the Sixth Floor Premises* [which form the subject matter of the present Suit] or directing the Defendants to pay any mesne profit to the Plaintiff. The question of appointing a Court Receiver would arise only when the Court comes to the conclusion that *prima facie* the Plaintiff has an excellent chance of succeeding in the Suit and further that there is some emergency, danger or loss demanding immediate action. On an application for the Appointment of the Court Receiver, the Court would also examine the conduct of the party who makes the application and would usually refuse to interfere unless his conduct has been free from blame. In the present case, there is already an order passed at the ad-interim stage dated 7th May 2014, under which the Defendants have been restrained from selling, alienating, transferring, encumbering or creating any third party rights in respect of *Flat No.21; the Ground Floor Premises and the Sixth Floor Premises* in the building called *Al-Sabah Court*. In my opinion, in the facts and circumstances of the present case, an injunction restraining

the Defendants from creating any third party right, title or interest in the premises which are in their respective possession, would adequately safeguard the rights of the Plaintiff, if any.

86. In these circumstances, it is directed that pending the hearing and final disposal of the Suit:

- (i) Defendant No.1 is restrained by an order and injunction from selling, encumbering, parting with possession and/or creating any third party right, title or interest in *Flat No.21* situated on the 5th floor of the building called *Al-Sabah Court* situated at Marine Drive, Mumbai – 400 020 along with the parking garage admeasuring 225 sq.ft.
- (ii) Similarly, Defendant No.2 is restrained by an order and injunction from selling, encumbering, parting with possession and/or creating any third party right, title or interest in the room/office premises on the Ground Floor admeasuring about 270 sq.ft. (carpet) next to Flat No.1, of the building called *Al-Sabah Court* situated at Marine Drive, Mumbai – 400 020.
- (iii) Defendant No.3 is also restrained by an order and

injunction from selling, encumbering, parting with possession and/or creating any third party right, title or interest in the room adjacent to the terrace admeasuring about 300 sq.ft. (carpet) situated on the Sixth Floor of the building called *Al-Sabah Court* situated at Marine Drive, Mumbai – 400 020.

87. The above Notice of is disposed of in the aforesaid terms. However, there shall be no order as to costs.

88. Considering that the Suit is of the year 2014, the hearing of the above Suit is expedited and placed on board for framing issues on 16th December 2022.

89. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)