HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Application No.356 of 2014 &

Application No.1308 of 2015

in CS No.14 of 1958

ORDER ::

Application no.356 of 2014 is being taken up for hearing pursuant to the order passed by the Hon'ble Supreme Court in SLP (Civil) Nos.17362 & 17363 of 2014 dated 02-09-2015. The operative portion of the order reads as under:-

"Regard being had to the nature the order, we are not disposed to state the facts in detail. Suffice it to mention that the first respondent filed an IA before the learned single Judge in the suit claiming himself to be the General Power of Attorney and on that basis sought the injunction. The grounds taken therein are manifold. The order passed by the learned single Judge has the character of ad-interim nature. It has been brought to out notice that the petitioners have file suit No.643 of 2014 in the High Court of Bombay seeking declaration of the power of attorney dated 02-04-2004 and 07-01-2005 as fraudulent, illegal and without any authority of law. The suit that is pending on the original side of the High Court of Andhra Pradesh is a suit for partition wherein a preliminary decree was passed way back in 1963. The matter is continuing at the final decree stage.

As claimed by the petitioners, it had vide letter dated 19-03-2014 has cancelled the power of attorney. Regard being had to the facts and circumstances in entirety, we are only inclined to request the learned single Judge to dispose of the IA filed by the 1st respondent by the end of January, 2016. As agreed to by learned counsel for the first respondent, he will not create any further third party interest on the basis of the general power of attorney till then. To elaborate, he shall not create any third party interest barring whatever has already been created. The interim injunction passed by the learned single Judge shall remain in force till the matter is adjudicated and for a span of six weeks thereafter."

2. The application No.356 of 2014 is filed under Order 39, Rule 1 and 2 read with Section 151 of CPC seeking the following reliefs:-

1) To restrain the respondents from interfering or

obstructing in any manner in his exclusive right to act for and on behalf of the 1st respondent-Company including prosecuting the pending matters in respect of the suit schedule property in CS No.14 of 1958;

2) To restrain the respondents from executing or registering any document having affect of cancellation of General Power of Attorney document bearing document No.521/04, dated 02.04.2004 and document No.86/05, dated 07.01.2005 registered in the office of the Sub-Registrar, Mumbai;

3) To restrain the respondents from disturbing or changing the Attorneys who were appointed/ engaged by the applicant to represent the 1st respondent or substituting the existing attorneys; and

4) To declare that the General Power of Attorney bearing document No.521/04, dated 02.04.2004 and document No.86/05, dated 07.01.2005 registered in the office of the Sub-Registrar, Mumbai, are not capable of being cancelled or rescinded and any act of the respondents having the affect of cancellation of the said documents as illegal, null and void.

3. This application came up earlier and dealt with by a learned single Judge of this Court, after hearing the arguments of learned counsel for the applicant, by order dated 07-04-2014, passed the following order:-

"Heard learned counsel for the petitioner. It is submitted that there is no express provision in both GPAs executed by the first respondent for termination as per the provisions of Section 202 of the Contract Act, when the GPAs are executed after receiving entire consideration amount. In that view of the matter issue ad-interim injunction as prayed for. Notice to the respondents. Post after service of notice."

4. This order was appealed against in OSA Nos.22 and 23 of 2014 by the 1st respondent-M/s.Cyrus Investments Private Limited, (for short, "1st respondent-Company"), represented by 5th respondent and 4th respondent authorized signatory of the 1st respondent-Company, respectively. The appeals, OSA Nos.22 and 23 of 2014 came to be dismissed by a Division Bench of this Court.

5. The 1st respondent-Company, further aggrieved carried the matter to the Supreme Court and as noted above, vide order dated 02-09-2015 in the SLP (Civil) Nos.17362 & 17363 of 2014, the Supreme Court while giving certain directions, which are extracted above, required this Court to dispose of the application.

6. Facts briefly stated, relevant for the purpose of disposal of the application, including application no.1308 of 2015 filed to vacate the interim order passed in application no.356 of 2014, be noticed.

7. That 1st respondent-Company had purchased all that the rights, title and interest, which the HEH the Nizam (defendant no.156) was having in CS No.14 of 1958 under registered sale deed dated 28-07-1967 and got impleaded in the suit, which was filed for discovery of and partition of the estate of the late Nawab Kurshid Jah, as defendant no.206. That 1st respondent-Company appointed the applicant as its General Power of Attorney holder under various deeds and documents including registered document no.521 of 2004 on 2-04-

2004 and another on 07-01-2005 vide registered document no.86 of 2005, both on the file of Sub-Registrar, Mumbai, and the recitals of the said deeds would clearly disclose that the value of the suit schedule property was ascertained as Rs.20.00 lacs and the said consideration amount was paid to the 1st respondent-Company by the applicant. That the true nature of the said deeds is nothing but conferment of lawful authority on the applicant to act on behalf of the 1st respondent-Company. In other words, these registered documents are to be construed as falling under Section 202 of the Contract Act, 1872, and that the 1st respondent-Company has no authority to cancel or rescind the GPAs executed in favour of the applicant. That the applicant has been incurring huge expenditure protecting the suit schedule property. That while the matters stood thus, the 5th respondent had issued a notice dated 19-03-2014 informing the applicant that the GPA executed in his favour is cancelled and the applicant should desist from acting further on behalf of the Company. That the applicant's attorneys were also served with the letter dated 02-04-2014 informing them that their vakalat is rescinded and the 1st respondent-Company intended to engage their choice of attorneys. Therefore, the applicant filed the application no.356 of 2014 seeking for the reliefs noted above.

8. 1st respondent-Company filed counter affidavit along with application being Application no.1308 of 2015 to vacate the interim order dated 07-04-2014 granted in Application no.356 of 2014 stating that the Company entered into an indenture dated 23-02-1967 with HEH, the Nizam of Hyderabad, pursuant to which the Company acquired the moiety of the suit property purchased by the Nizam of Hyderabad for the consideration set out therein. That on the basis of the indenture, the 1st respondent-Company filed an application being application No. 82 of 1967 in the present suit for impleading the 1st respondent-Company, as party defendant to the suit and the said application was allowed by this

Court and the 1st respondent-Company was impleaded as defendant No. 206 in the present suit. That the properties conveyed to the 1st Respondent-Company under the indenture where situated in and around Hyderabad and Secunderabad and required several regulatory clearances, whereas the 1st respondent-Company was based out of Bombay, therefore, was not able to manage the day to day affairs of the said immovable property on its own. That in the year 1994, the applicant represented to the 1st respondent-Company that he could secure the compliances in relation to properties forming part of the moiety conveyed to the 1st respondent-Company. In view of the aforesaid understanding, the 1st respondent-Company gave various power of attorneys to the applicant for the purpose of managing the said immovable property for and on behalf of the 1st respondent-Company and to protect and safeguard its interest in the said immovable property. That the 1st respondent thereafter passed a resolution dated 26-03-2004 in its Board meeting whereby the 1st respondent-Company authorized 3rd respondent, a director of Company, to execute power of attorney in favour of the applicant, on behalf of the Company, for managing and dealing with three properties to the applicant (for short, 1st resolution property). However, without the knowledge of the 1st respondent- Company, the 3rd respondent fraudulently and in collusion with the applicant, executed the power of attorney dated 02-04-2004 in favour of the applicant, authorizing the applicant as if it is constituted attorney in respect of all the properties forming subject matter of the suit property and coming to the share of the 1st respondent-Company under the indenture. That under the said power of attorney dated 02-04-2004, the applicant was required to account to the Company all the transactions done by him. That the applicant represented to the 1st respondent-Company that he had sold some part of the 1st resolution properties for an aggregate value of Rs.20.00 lacs and was therefore liable to pay the Company an amount of Rs.20.00 lacs. That in Board meeting of the 1st respondent-Company held on 06-01-2005, the 1st respondent-Company passed a resolution agreeing to accept the amount of Rs.20.00 lacs towards sale price of the part of the 1st resolution property sold by the applicant under the power of attorney dated 02-04-2004. That vide the said Board resolution, the 1st respondent-Company also agreed to execute a fresh power of attorney in favour of the applicant giving the applicant the power for managing three more properties (for short, 2nd resolution property) and for these properties also, the 3rd respondent, a director of the Company was authorized to execute power of attorney in favour of the applicant for managing and dealing with the 2nd resolution property. However, without the knowledge of the 1st respondent-Company, the 3rd respondent, fraudulently and in collusion with the applicant, executed power of attorney dated 07-01-2005 in favour of the applicant in respect of all the properties forming subject matter of the suit and coming to the share of the 1st respondent-Company under the terms of the indenture.

9. That the 1st respondent-Company further states that in or about 2014, the authorized representative of the Company could peruse the power of attorney dated 07-01-2005 and was surprised to note the contents thereof. That the power of attorney wrongly recorded that an amount of Rs.20.00 lacs was consideration for the said power of attorney granted by the 1st respondent-Company to the applicant. When in fact the said sum of Rs.20.00 lacs was to be paid by the applicant to the 1st respondent from out of the sale proceeds of the 1st resolution property sold by the applicant under power of attorney dated 02-04-2004. That the applicant fraudulently obtained the powers of attorney

dated 02-04-2004 and 07-01-2005 in collusion with 3rd respondent, a director of the Company. That applicant also committed several breaches of the powers of attorney inter alia, fraudulently carrying out transactions in respect of the properties of the 1st respondent-Company, not accounting for such transactions, annulling transactions already entered into between 1st respondent- Company and bona-fide third party purchasers. That having noticed various breaches, the 1st respondent-Company vide notice dated 19-03-2014 terminated the powers of attorney granted in favour of the applicant including the powers of attorney dated 02-04-2004 and 07-01-2005. That 1st respondent-Company thereafter vide its letter dated 02-04-2014 addressed to the advocates on record in the suit sought to revoke vakalatnama issued for and on above of the 1st respondent-Company, by the applicant. But to the surprise of the 1st respondent-Company, they were served with the copy of the ad-interim order passed by this Court in the above application and ultimately matter was carried up to Supreme Court and the Supreme Court has clarified that the 1st respondent-Company has a right to contest the matter in its independent right.

10. In the circumstances it is stated by the 1st respondent-Company that Application No.356 of 2014 is misconceived and liable to be dismissed.

11. Reply affidavit is filed by the applicant to the counter affidavit of the 1st respondent-Company. It is stated that the contention that this Court has no jurisdiction to entertain the present application, on the ground that it is outside the scope and ambit of the suit claim is in fact considered by the Division Bench of this Court in the appeal filed by the 1st respondent-Company and, therefore, the same cannot be re-agitated. That the relief sought in the present

application is valid and maintainable in law and the objection of the 1st respondent-Company is totally misconceived. That in view of the recitals of the power of attorney deeds, the 1st respondent-Company has no right to conduct or participate in the suit proceeding and therefore the choice to engage counsel, is not available to the 1st respondent-Company after taking the entire consideration amount in respect of the suit schedule property. That the 1st respondent-Company for about 10 long years, no objection was ever raised to the contents of the two power of attorneys and hence the present allegation of fraudulent collusion by the applicant and the 3rd respondent is false and an afterthought only to grab the schedule property after clearance in the Courts up to Supreme Court. It is stated that this Court has jurisdiction as entire suit schedule properties are situate within the jurisdiction of this Court. That the 3rd respondent is now not actively participating the affairs of the 1st respondent-Company and no details are furnished as to what steps are taken against him for the alleged fraud. That basing on the averments, prima facie case and balance of convenience and also irreparable loss, this Court was pleased to grant ad-interim injunction, the 1st respondent-Company unsuccessfully filed appeal and further carried the matter to Supreme Court and, therefore, now cannot raise the very same objections which were considered and rejected by the Division Bench and confirmed by the Supreme Court. That any disputes amongst the Directors of the 1st respondent-Company does not affect the transactions which are entered into with the applicant and third parties. That having resorted to filing a suit, the 1st respondent-Company is precluded from taking the same defence in the present application.

12. Heard Sri Vedula Venkataramana, learned senior counsel representing Sri B. Chandrasen Reddy, learned counsel for the applicant and Sri D. Prakash Reddy, learned senior counsel representing Sri RN Hemendranath Reddy,

learned counsel for the 1st respondent-Company.

13. Sri Vedula Venkataramana, learned senior counsel appearing for the applicant contended that 1st respondent-Company having received an amount of Rs.20.00 lakhs towards total value of schedule property coming to its share in C.S.No.14 of 1958 executed registered power of attorneys dated 02-04-2004 and 7-1-2005, created interest in suit schedule property, as such, it is not open for the 1st respondent-Company to cancel the power of attorneys unilaterally by simple letter dated 19-03-2014 that too after a lapse of ten years period. It is contended that power under the two power of attorneys is coupled with interest thus, it is irrevocable and falls within the purview of Section 202 of the Act. It is stated that an interest in the subject property that forms the subject matter of agency created through power of attorneys, the agency cannot be terminated to the prejudice of such an interest and no notice as required under Section 206 of the Act was issued to the applicant, but straight away unilaterally cancelled the registered GPAs dated 2-4-2004 and 7-1-2005. He also contended that there is no reference to GPA dated 7-1-2005 in the letter dated 19-3-2014 cancelling GPA dated 2-4-2004 and no resolution of the Company to that effect is filed. It is also contended that if the 1st respondent-Company based fraud and collusion as its claim for cancelling the GPAs, the remedy would have been to seek remedy under Section 31 of Specific Relief Act in Court of Law and inasmuch as 1st respondent has already filed civil suit no.643 of 2014 seeking the self same relief, it is not open to contend that GPAs are cancelled. Learned counsel further contended that as the right and interest accrued to the applicant on payment of consideration ascertained and incurred huge expenditure in protecting the suit schedule property, the applicant is entitled for the relief of injunction against the respondents from interfering with the exercise of powers

under the power of attorneys. In support his contentions, learned counsel relied on the decisions in M. JOHN KOTAIAH vs. A. DIVAKAR (AIR 1985 AP 30), & DHURANDHAR PRASAD SINGH vs. JAI PRAKASH UNIVERSTIY (2001) 6 SCC 534).

14. Sri D. Prakash Reddy, learned senior counsel appearing for the 1st respondent-Company strenuously contended that the power of attorney dated 2-4-2004 is nothing than an agency simplictor and the *sine quo non* for making a power of attorney irrevocable is that the power of attorney should create an interest with respect to the subject matter in the agency and if such an interest is created for the benefit of the agency, it should be contemporaneously provided for in the instrument itself and should not only be express but also explicit. It is further contended that power of attorney dated 7-1-2005 wrongly recorded that the amount of Rs.20.00 lacs received by the Company from applicant towards value of share of 1st respondent-Company in suit schedule property in CS No.14 of 1958, but in fact the said sum was paid by the applicant from out of the sale proceeds of the first resolution property sold by him under power of attorney dated 2-4-2004. It is also stated that Section 202 of the Act applies only to cases where the authority is given for the purpose of being a security or a part of a security and the powers of attorney dated 2-4-2004 and 7-1-2005 does not amount to agency coupled with interest, but conferment of authority to do all the acts and things, which authority is capable of being rescinded or cancelled. It is also contended that 3rd respondent without the knowledge of the 1st respondent-Company, fraudulently and in collusion with the applicant executed power of attorney dated 7-1-2005 in favour of the applicant in respect of all the properties forming subject matter of the suit and coming to the share of the 1st respondent-Company under the terms of the

indenture. He also contended that the applicant has no *locus standi* to maintain application, as relief sought is beyond scope of suit and not ancillary to the main prayer and relief sought in the application shall have to be sought by way of independent suit. He also contended that this Court has no territorial jurisdiction as GPAs are executed at Mumbai. Following decisions are relied by the learned counsel in support of his contentions. MUTHARASU THEVAR vs. MAYANDI THEVAR (AIR 1968 MADRAS 333), SURAJ LAMP AND INDUSTRIES PRIVATE LIMITED vs. STATE OF HARYANA (2012) 1 SCC 656) & SHYAMALI DAS vs. ILLA CHOWDHARY (2006) 12 SCC 300).

15. Having referred to petition and counter averments including averments in reply and having heard learned senior counsel for the contesting parties, the issues that arise for consideration are:-

i. whether the applicant has *locus standi* to maintain application no.356 of 2014;

ii. whether the registered GPAs dated 2-4-2004 and 7-1-2005 falls within the scope of Section 202 of the Contract Act and not amenable for cancellation by the 1st respondent-Company by way of letter dated 19-3-2014; &

iii. whether the applicant is entitled for the relief of injunction restraining the respondents from obstructing in any manner in his exclusive right to act for and on behalf of the 1st respondent-Company in the light of GPAs dated 2-4-2004 and 7-1-2005 executed by the 3rd respondent on behalf of the 1st respondent-Company in his favour.

Issues i) & ii) ::

16. It is to be seen that admittedly the 1st respondent-Company, through 3rd respondent, one of its authorized directors, got executed two registered GPAs

dated 2-4-2004 and 7-1-2005 in favour of the applicant by stating it received entire value ascertained at Rs.20.00 lacs in respect of the suit property falling to the share of the 1st respondent-Company in CS No.14 of 1958. It is also admitted case of the parties that the 1st respondent-Company has purchased all that the rights, title and interest, which the HEH the Nizam (defendant no.156) had in CS No.14 of 1958 under registered sale deed dated 28-07-1967 and got impleaded in the suit. It would be worthwhile to examine the contents of the registered GPA dated 7-1-2005 executed in favour of the applicant, which also speaks of registered GPA dated 2-4-2004, contents relevant for the purpose reads thus:-

"**GENERAL POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS that we, M/s.CYRUS INVESTMENTS LIMITED (a Company registered under Indian Companies Act – VII of 1913) and having its registered office at Esplanade House, Waudly Road, Fort, Bombay – 400001 (hereinafter referred to as "Company") represented by its Director MR.KHUSHROO BURJOR CAPTAIN, residing at Palm Springs, D/4, 157, Cuffe Parade Road, Bombay – 400005, do hereby declare and state that:-

1. We, M/S. CYRUS INVESTMENTS LIMITED (a Company registered under Indian Companies Act – VII of 1913) and having its registered office at Esplanade House, Waudly Road, Fort, Bombay – 400001 (hereinafter referred to as "Company") is one of the defendant and share holder of the properties appended to the Preliminary Decree" passed on 28-06-1963 in CS No.14 of 1958.

2. The preliminary decree as defined under Section 2(2) of CPC is not capable of execution, normally till a final decree is passed.

3 According to Order XXI, Rule 16 CPC, the preliminary decree passed will be pending and the rights of the parties have to be adjusted as on the date of final decree. However, the preliminary decree determines the moieties of the respective parties and thereby furnishes the basis upon which the division of the property has to be made.

4. The assignment of decree enable a transferee to apply for execution of decree.

5. In view of the above provision, obviously the GPA Agent empowered to manage the properties and to enter into agreements of sale and to execute sale deeds in respect of the whole or part of any such properties mentioned in the schedule of property appended to the Power of Attorney may be by itself

transfer/convey such properties to any of the third parties or prospective purchasers unless the Court recognizes and pass final decree and unless a final decree is passed, the properties covered under the preliminary decree can not be identified by metes and bounds. However, the exact share in the properties of the defendant can be established, and thereby the decree does not carry market value in the popular mercantile sense.

A N D

WHEREAS we have already appointed SRI PS PRASAD, S/o.late PS Rao, aged about 56 years, Occupation: Business, R/o.6/10, Shantiniketan, New Delhi 21, by a GPA dated 2-4-2004, registered as document no.529 of 2004 at RO, Mumbai as our true and lawful attorney, in pursuance of the agreement, a payment of Rs.20 Lakhs by the Attorney to the principal therein for the powers vested on him by means of the above said GPA to do acts, deeds and things in our name and on our behalf but at the cost of the said attorney, to do and execute all or any of the acts and things and powers therein contained in respect of the properties specified in the schedule hereunder written, hereinafter referred to as the "properties" of which the company is the owner and possessor by virtue of its purchase through registered sale deed dated 28-07-1967.

The value of the landed properties of CS 14 of 1958 to the share of M/s.Cyrus Investments Ltd. is Rs.20 lakhs as per the preliminary decree.

We further declare and confirm that in lieu of Power of Attorney given to the Attorney, the said attorney has already paid an amount of Rs.20 lakhs to the Principal and Principal therein already acknowledged the receipt of amount/consideration paid to the principal.

Conditions (i) to (xviii)……..(omitted as they are usual conditions vesting power on the applicant to deal with the suit property including to enter into agreement of sale and execute sale deeds)

SCHEDULE OF PROPERTIES ABOVE REFERRED

1. Item No.29 in Schedule-IV appended to the preliminary decree in CS No.14 of 1958 falling to the share of M/S.CYRUS INVESTMENTS LIMITED.

2. Item No.12 in Schedule-IV appended to the preliminary decree in CS No.14 of 1958 falling to the share of M/S.CYRUS INVESTMENTS LIMITED.

3. Land in Survey No.77, situated at Hafeezpet Village, Serilingampally mandal, Ranga Reddy District which forms part of Item No.37 in Schedule – IV appended to the preliminary decree in CS No.14 of 1958, falling to the share of M/S.CYRUS INVESTMENTS LIMITED.

4. <u>Any other property in CS No.14 OF 1958 falling to the share of M/S.CYRUS INVESTMENTS LIMITED, including compensation.</u> (*emphasis supplied*)"

17. From a reading of the contents of the registered GPA dated 7-1-2005 coupled with the purport of GPA dated 2-4-2004, *prima facie* two things emerge very manifestly. Firstly, in pursuance of the GPA dated 2-4-2004, the applicant has paid Rs.20.00 lakhs towards the ascertained value of the entire suit property in CS No.14 of 1958 coming to the share of 1st respondent-Company and secondly, the Company having acknowledged the consideration, and in lieu thereof executed GPA dated 7-1-2005 and vested absolute powers on the applicant to sell, enter into agreement of sales, execute sale deeds and receive amounts thus created absolute interest in the subject matter of suit property in CS 14 of 1958 in favour of the applicant which goes to show that it allowed the applicant to go on his own and assert his right. The 1st respondent-Company kept quite for a decade and only after lapse of 10 years, the 1st respondent-Company alleging fraud and collusion, by way of letter dated 19-03-2014 sought to cancel GPA dated 2-4-2004. Though the ground on which the GPAs were sought to be cancelled is that of fraud and collusion, no details of fraud are stated in the letter dated 19-03-2014 except saying applicant transferred properties in favour of his nominees, relatives etc. for which power was given to him by receiving entire consideration in respect of the subject property in GPAs.

18. Admittedly, there is no reference of GPA dated 7-1-2005 in the letter dated 19-03-2014. Both the GPAs dated 2-4-2004 and 7-1-2005 are registered documents and executed after receipt of total value of the suit property in CS No.14 of 1958 ascertained at Rs.20.00 lakhs and the parties also understood

that the consideration is towards landed suit property coming to the share of the 1st respondent-Company. To examine whether the registered GPAs dated 2-4-2004 and 7-1-2005 are capable of cancellation, inasmuch as interest has been created in favour of the agency, it is trite to extract Section 202 of the Act, which reads as follows:-

> "202. Termination of agency, where agent has an interest in subject-matter---Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

19. A reading of above provision of law makes it clear that when once interest is created in favour of the agency, the same cannot be terminated. In this case interest is created in favour of the applicant as the 1st respondent-Company received entire consideration towards subject matter and in a way the applicant has stepped into the shoes of the 1st respondent-Company and continued as such for ten long years and even according to 1st respondent noticed fraud only in the year 2014 which goes to show that 1st respondent-Company sold all the rights in the suit property to applicant and kept quite for all these years. It is the case of the applicant that he entered into number of transactions during that period. Section 204 of the Act postulates that the principal cannot revoke the authority given to his agent after the authority has been partly acted upon by the agent. There is no express term to the contrary of the interest of the applicant for cancellation. I n ***M. John Kotaiah's*** case (1 supra) the main question that fell for consideration was whether the power of attorney executed by the 2nd defendant in favour of the petitioner-plaintiff therein on 8-1-1977 prima facie satisfies the legal requirements for being construed as an irrevocable power of attorney or not. At the cost of repetition, in this case, 1st respondent-Company received entire consideration lieu of the value of the suit property allowed the applicant to transact with the said property in his own

right under the two registered GPAs dated 2-4-2004 and 7-1-2005, thus it is implied, both by virtue of the terms reduced into writing in the GPAs as well as the conduct of the 1st respondent-Company that the GPAs fall within the purport of Section 202 of the Act.

20. Section 206 of the Act speaks of issuance of notice of revocation, which reads thus:-

> "206. Notice of revocation or renunciation--Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case my be, must be made good to the one by the other."

21. Admittedly, no notice was issued to the applicant before issuing the letter dated 19-03-2014 seeking to revoke the GPAs. The purported ground for issuing the letter dated 19-03-2014 is that the applicant has played fraud in collusion with the 3rd respondent and wrongly recorded the terms of the GPA dated 7-1-2005. One of the plea taken is that the amount of Rs.20.00 lakhs is received by the 1st respondent-Company was towards the sale consideration of the first resolution properties, but no were in the GPAs dated 2-4-2004 and 7-12005 it was specifically stated that the amount of Rs.20.00 lakhs was received only as part sale consideration towards the first resolution properties. Even in the letter dated 19-03-2014 the receipt of Rs.20.00 lakhs by 1st respondent-Company towards the value of its share in CS No.14 of 1958 is not specifically denied and it is also not stated the same is received as a part consideration. But for the first time it is stated in counter that the amount was received towards the sale proceeds of the first resolution properties. Further, the details as to what action and steps are taken against the 3rd respondent who was authorized by the Company and alleged to have committed fraud are not forthcoming.

22. Even if it is assumed that both the GPAs are have been executed by the 3rd respondent by playing fraud in collusion with the applicant and therefore voidable, the validity or otherwise of the said allegation is the subject matter of the suit no.643 of 2014 filed by the 1st respondent-Company on the file of Bombay High Court and till a finding is recorded on the relief sought for by the 1st respondent-Company, the GPAs dated 2-4-2004 and 7-1-2005 holds good and the agency is entitled to act upon the terms of the GPAs, more so, when it is coupled with interest as is manifest from the terms of the GPAs.

23. Section 31 of the Specific Relief Act, which reads as under:-

"31. When cancellation may be ordered.--(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

24. It is well-settled law that there is a presumption of a registered document being validly executed. A registered document would, therefore, *prima facie*, be valid in law. The onus of proof, thus, would be on a person who questions the same. There is a distinction between a void and a voidable document. A person is not required to seek cancellation of a document which is void, but he is required to seek cancellation of the document which is voidable. (see ***Prem Singh vs. Birbal*** (2006) 5 SCC 353). In this case, 1st respondent has already filed suit for cancellation of GPAs in Bombay High Court.

25. In the case of ***MD. NOORUL HODA vs. BIBI RAITUNNISA*** (1996 (7) SCC 766) the Supreme Court observed that when the plaintiff seeks to establish title to a property which cannot be established without avoiding the decree or an instrument the same stands as an insurmountable obstacle in his way, which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have the decree, instrument or contract cancelled or set aside or rescinded. It was opined that Section 31 of the Specific Relief Act, 1963 regulates suits pertaining to cancellation of an instrument, which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled.

26. In ***Dhurandhar Prasad Singh's*** case (2 supra) the Supreme Court at para 22 while examining the expressions "void and voidable" held thus:

"22. Thus the expressions void and voidable have been subject matter of consideration on innumerable occasions by courts. The expression void has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.”

27. Fraud has to be pleaded and proved for setting aside the decree or instrument obtained by fraud. In the instance case on hand, fraud alleged is not in relation to misrepresentation, but the alleged fraud and collusion relates execution of a document by the authorized grantor to the grantee, and in such cases it was held that the Court may direct the party affected party to file separate suit for setting aside the decree or instrument obtained by fraud.

28. It is no doubt true that fraud vitiates everything, but as stated above, such a plea has to be pleaded and substantiated by the person who alleges fraud and mere allegation will not invalidated the proceedings. It is settled proposition of law that where a power of attorney is given for valuable consideration, as in the present case, so long as the agency is created with interest, the power of attorney is irrevocable. The same is the connotation of Section 202 of the Contract Act lays down the rule that ‘an authority coupled with an interest is irrevocable’. The section provides that where the agent has himself an interest in the property, which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. In other words, where an agreement is entered into on sufficient consideration, whereby an authority is given for the purpose of conferring some benefit on the agency of that authority, such an authority is irrevocable.

29. In ***Mutharasu Thevar’s case*** (3 supra) it was observed by the Madras High Court that the principal has the right to have his counsel to conduct his litigation, notwithstanding the fact that the agency in question is irrevocable or

not. But that was a case where the power of attorney incidentally provided for an assurance that the agent can have recourse to the properties of the principals for advances made by him. In that case it was observed that no security was in fact created upon the execution of the instrument and no interest is coupled with the agency. In the present case, the applicant has paid the entire amount ascertained for the value of the suit property coming to the share of the 1st respondent-Company in CS No.14 of 1958 and practically sold all the rights conferring power on him for selling the suit property and the two registered GPAs were operating for almost a decade and in the interregnum period the applicant is stated to have entered into several transactions with third parties and thus an interest is created and to protect such interest, as a necessary corollary, agency can engage counsel of its choice to protect and propagate its 'interest' in relation to the subject matter, otherwise it will affect his rights. Hence, from the above it merges that until and unless the GPAs dated 2-4-2004 and 7-1-2005 are invalidated, the applicant cannot be lawfully prevented from exercising his powers under the said GPAs.

30. As regards *locus standi* of the applicant, it is to be observed that the Apex Court while disposing of SLPs filed against the order in OSA Nos.22 and 23 of 2014, which were filed against the ad-interim order dated 7-4-2014 passed by the learned single Judge of this Court in this application no.356 of 2014, maintained the ad-interim order passed by learned single Judge while observing that 1st respondent-Company can independently agitate its rights in the application. The Apex Court before finally disposing of the SLPs by requiring this Court to dispose of this application, granted status-quo on 30-07-2014 and when applicant filed IA No. 3 of 2014 for modification of the order dated 30-07-2014, passed the following order on 31-10-2014, which reads as follows:-

"(a) The petitioners as well as the respondents shall not create any further third party interest. To elaborate, neither the petitioners on the basis of the assumed right, title and interest should create any third party right nor should the General Power of Attorney holder create any third party interest.

(b) The transactions which have already been completed by the GPA holder, the said third parties can go with their prospects, subject to the result of these special leave petitions.

(c) If any third party in whose favour the transaction are completed face any difficulty, liberty is granted to it to file appropriate application in these special leave petitions and not be any other Court.

(d) The petitioners are also prohibited from approaching any other Court as the main thrust of the controversy pertains to creation of the GPA and cancellation thereof and hence, they should approach this Court.

(e) Any other suit or proceeding pending in any Court in India shall await the verdict of these Special Leave Petitions."

31. The Apex Court passed the above interim order to protect the interest of both parties. The applicant is a party to the two registered GPAs dated 2-4-2004 and 7-1-2005 sought to be cancelled by 1st respondent-Company in civil suit no.643 of 2014 on the file of Bombay High Court to which applicant is also a party. In the above circumstances, it cannot be said that the applicant has no *locus standi* to maintain the application and protect his interest.

Issue (iii) ::

32. The object of the interlocutory injunction is to protect the petitioner against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the balance of

convenience lies. (*see* ***GUJARAT BOTTLING COMPANY LIMITED vs. COCA COLA COMPNAY) (1995(5) SCC 545***).

33. Origin of the power to grant injunction is from equity, hence the exercise of the discretion by the Court is to be governed mainly by equitable considerations. While considering an application for injunction, it is well-settled, the Court would pass an order thereupon having regard to *viz.,* (i) prima facie case, (ii) balance of convenience; and (iii) irreparable injury. In order to determine whether the applicant has a *prima facie* case, it is required to assess the strength of the applicant's claim based on the evidence brought before the Court. In this case the registered GPAs dated 2-4-2004 and 7-1-2005 were executed on behalf of the 1st respondent-Company after receiving the consideration of Rs.20.00 lakhs towards the value of the suit property coming to the share of 1st respondent-Company and operating for the last 10 years, which, as observed above, is not capable of revocation. There is hardly any doubt that the power given by the 1st respondent-Company in favour of the applicant is a power coupled with interest and that is clear both from the tenor of the document as well as from its terms and, hence the applicant has made out *prima facie case*. From the facts available on hand, balance of convenience is also in favour of the applicant and against the 1st respondent, as it cannot be lost sight of the fact that the 1st respondent has kept quite for a decade after execution of the GPAs and allowed the applicant to act upon and exercise his rights flowing therefrom. Till the contrary grounds of fraud and collusion are proved, the legitimate right of the applicant to exercise his rights under the said GPAs, cannot be denied as any denial of exercise of rights of the applicant under the GPAs will cause irreparable loss to him. The facts in ***Suraj Lamp***

and Industries Pvt. Ltd.'s case (4 supra) are distinguishable. The Supreme Court while examining the observations of the Delhi High Court in ***Asha M. Jain vs. Canara Bank*** wherein the concept of power of attorney sales has been recognized by the Court as a mode of transaction when dealing with transactions by way of general power of attorney as unwarranted and not justified and unintededly misleading the general public into thinking that GPA transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. The Supreme Court observed that the decision of the Delhi High Court in the ***Asha M. Jain's case*** is not a good law. It was held that immovable property can be legally and lawfully transferred/conveyed only by of a registered deed or conveyance. The Supreme Court further held that GPA holder cannot create title in immovable property except to the limited extent of Section 53-A of the Transfer of Property Act. But in the case on hand, it is squarely falling within the meaning of Section 202 of the Act and is not revocable. Moreso in the present case the two GPAs are registered sale deeds executed after receiving entire sale consideration and are in operation for a decade. The applicant was also given the right to mortgage the suit property, all this 1st respondent-Company cannot be said to have done unwittingly, but it had done so after receiving entire consideration towards the value ascertained in respect of the suit property. The Apex Court in ***Ashwani Kumar Singh vs. UP Public Service Commission*** (2003 11 SCC 584) held that observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute and the judgments of Courts are not to be construed as statues. In ***State of Rajasthan vs. Basant Nahata*** (2005) 12 SCC 77) also the Apex Court reiterated the same view and held that except in cases where power of attorney is coupled with interest, it is revocable. The facts in the case on hand are on different footing. Applicant has an interest in the subject matter of agency in terms of Section 202 of the Act and, therefore, the applicant cannot be construed as a stranger to the transaction. In this case, the Apex Court directed for disposal of the application by holding that 1st respondent can agitate its rights independently. Applicant is a party to the two GPAs sought to be cancelled by 1st respondent in the suit filed in the Bombay High Court. This application is being taken up on the directions of the Supreme Court wherein it has passed certain directions after hearing both sides. In view of the same, other judgments cited by the learned counsel for the petitioner and the 1st respondent-Company have no bearing on the issue.

34. In the facts and circumstances of the case, and more particularly what is weighing much in the mind of the Court for continuing the interim order granted by this Court is, admittedly two registered GPAs i.e. dated 2-4-2004 and 7-1-2005 were executed by 1st respondent-Company after receiving the entire consideration of Rs.20.00 lakhs and the said GPAs were in operation for a decade without raising any doubt and in that view of the matter, the applicant is entitled for continuation of interim injunction granted on 7-4-2014 restraining the respondents from obstructing in any manner in his exclusive right to act for and on behalf of the 1st respondent under the two GPAs dated 2-4-2004 and 7-1-2005. Since, the civil suit no.643 of 2014 filed 1st respondent-Company seeking declaration of the GPAs dated 2-4-2004 and 7-1-2005 as fraudulent, illegal and without any authority of law is pending adjudication, the relief of injunction granted in favour of the applicant shall be subject to the result in the said suit no.643 of 2014. So far as the prayer contained in the clause 4 of the application, *i.e.* to declare that the General Power of Attorney bearing document No.521/04, dated 02.04.2004 and document No.86/05, dated 07.01.2005 registered in the office of the Sub-Registrar, Mumbai, are not capable of being cancelled or rescinded is concerned, the same is refused as the relief sought is declaratory in nature and more so, civil suit no.643 of 2014 filed by 1st

respondent seeking for cancellation of the said GPAs is pending on the file of High Court of Bombay.

35. In the result, the application 356 of 2014 is partly allowed to the extent indicated above and the interim injunction earlier granted by this Court is made absolute subject to the result in the civil suit no.643 of 2014 filed by the 1st respondent-Company and for the reasons stated above, the application 1308 of 2015 is dismissed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 29th January, 2016

NRG

HON’BLE SRI JUSTICE A.RAJASHEKER REDDY

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in CS No.14 of 1958

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DATED 29-01-2016