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**A.No.5657 of 2025**

**in**

**A.No.3123 of 2019**

**in**

**E.P No.32 of 2018**

**MASTER**

**01.06.2026**

**ORDER**

1. This is an application filed by the applicant/claimant seeking permission to examine the power of attorney holder on the ground that the applicant had recently undergone open heart bypass surgery and due to the old age and health condition he is unable to travel to depose before this Hon'ble Court. The 1<sup>st</sup> respondent/decreed holder has filed his counter raising objection that the present application to represent through power agent in A.No.3123 of 2019 in the above execution petition is not maintainable in law and on facts and is liable to be dismissed. Further, it is stated that the applicant has filed A.No.3123 of 2019 alleging that the sale certificate dated 10.11.2009 was issued in respect of the E.P schedule mentioned property on SARFAESI proceedings, hence E.P itself is not maintainable and now he wants to mark the document through his power of attorney holder Mr.S.Mahendra Kumar and the power of attorney documents was executed approximately 16 years after the alleged transaction in question. The present application is also silent about the power of attorney holders personal knowledge about the transaction. Further, it is settled law that power of attorney holder can only depose about the facts within his personal knowledge and he cannot depose about those facts which are not within his knowledge or are within the personal knowledge of the person whom he represents or about the facts that may have transpired much before he entered the scene.



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2. Heard both side counsels and perused the materials on record. The applicant/  
3<sup>rd</sup> party has filed A.No.3123 of 2019 claiming independent title over the Execution  
Petition schedule mentioned property on the basis of purchase in proceedings under the  
SARFAESI Act and so the burden lies upon the applicant to establish such independent  
title. Now the present application is filed by the applicant seeking permission to examine  
the power of attorney holder on his behalf. The main objection raised by the learned  
counsel for the 1<sup>st</sup> respondent/decreed holder is that a power of attorney holder can only  
depose about the facts within his personal knowledge but here is a case where the power  
of attorney itself is executed 16 years after the alleged transaction in question. In support  
of his contention the learned counsel for the 1<sup>st</sup> respondent/decreed holder relied on the  
decision in **Janki Vashdeo Bhojwani and another –Vs– Indus Ind Bank Limited  
and others (2005) 2 Supreme Court Cases 217** wherein Hon'ble Apex Court held that  
*“a power of attorney holder cannot depose for principle in respect of matters of which  
only the principle can have personal knowledge and in respect of which the principle is  
liable to be cross examined”*. It is also held that *“where a party to the suit does not  
appear in the witness box and states his own case on oath and does not offer himself to  
be cross-examined by the other side, a presumption would arise that the case set up by  
him is not correct”*. The learned counsel for the 1<sup>st</sup> respondent also relied upon the  
decision in **K.S.Shivappa -Vs- K.Neelamma 2025 SCC online SC 2149** wherein it is  
held that *“the testimony of a power of attorney holder is inadmissible with regard to the  
facts within the personal knowledge of the plaintiff who has failed to enter the witness  
box”*.

3. As rightly pointed out by the learned counsel for the 1<sup>st</sup> respondent a power of  
attorney holder can depose only in respect of acts performed by him or facts within his  
personal knowledge and cannot depose with regard to matters which are exclusively



within the personal knowledge of the principle. In the present case, except stating that the petitioner has undergone a by-pass surgery and due to old age health condition he is unable to depose before this court, no material is placed to establish his inability to depose. Further, even in the application filed by the applicant there is no pleading that the proposed power of attorney holder had participated in the SARFAESI sale proceedings or has personal knowledge of the transaction constituting the applicants/claimants title. In view of the aforesaid discussion and in the facts and circumstances of the case, permitting the power agent to adduce evidence would amount to allowing a person having no personal knowledge to depose on behalf of the applicant/claimant on disputed questions of title with regard to the EP schedule mentioned property which is not permissible in law. Therefore, this court is not inclined to allow this application. However, the applicant/claimant is at liberty to enter the witness box personally and adduce evidence or to workout his remedy in the manner known to law.

With the above observations, this application is dismissed. No cost.

**MASTER**