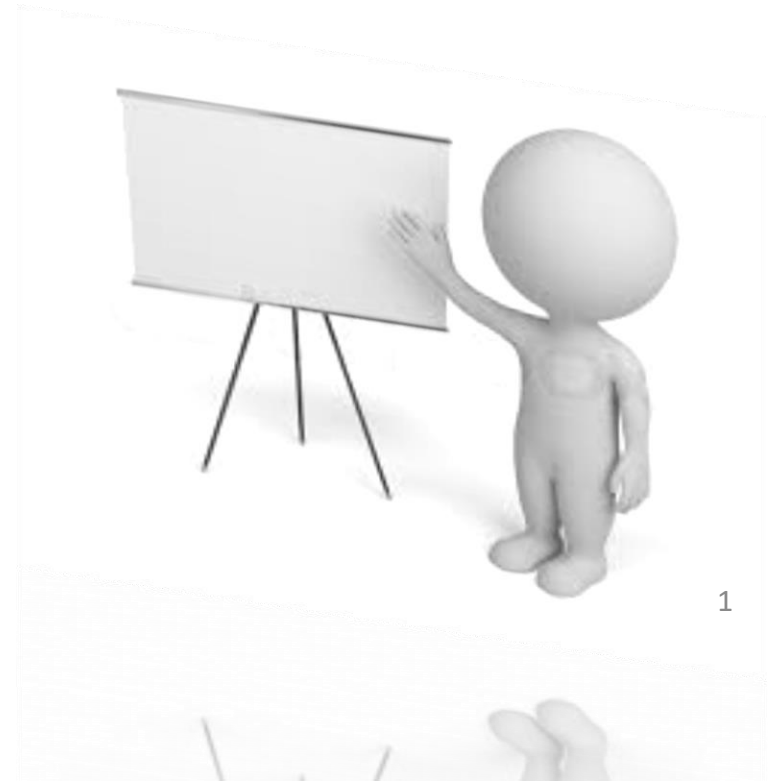


PRESENTER
MANAGING PARTNER - ACELEGAL
BHARAT AGARWAL
ON
INTRICACIES OF
POWER OF ATTORNEY

ACELEGAL

D-201, 2ND FLOOR,
TOWER No. - 3,
INTERNATIONAL INFOTECH PARK,
VASHI STATION COMPLEX,
NAVI MUMBAI – 400703.
PH: 27812781/82/0196



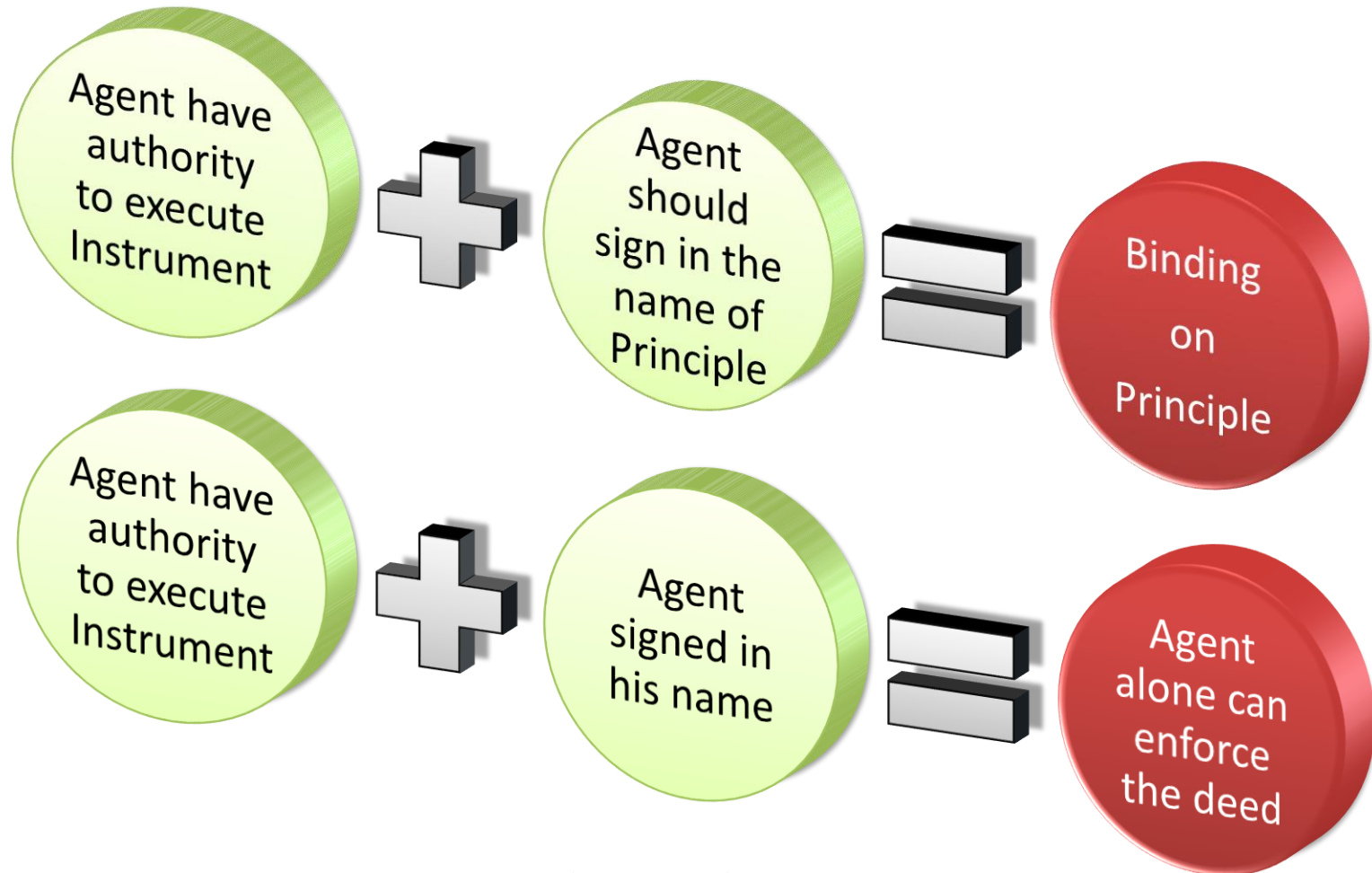
What is Power of Attorney?

- Any instrument which empowers a Specified Person to act for in the name of person executing it.

Qui Facit Per Alium Facit Per Se



Common Law of England



To Remove the Hardship

Section 2: Execution under power-of-attorney

The **donee** of a power-of-attorney may if he thinks fit:

1. Execute any instrument or do thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power;
2. Every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

The Indian Legislature immediately followed it and enacted the “POWER-OF-ATTORNEY ACT 1882”.

Objects of the POA Act

1

Provide for the deposit of instrument creating POA and for evidence of contents thereof.

2

To Remove the doubts as to reliability of donee of POA .

3

To Legalize the execution of instrument under POA Act.

SCOPE OF SEC. 2 of POA Act

- Section 2 of the POA Act cannot override the specific provision of a statute which requires that a particular act should be done by **“Party-in-person”**.

Gereralia Specialibus Non Derogant

T.C. Mathai Vs. District and Sessions Judge (1999) 3 SCC 614

12.5 % registration
in CIDCO

Income Tax
Summons u/s. 131

Criminal
Proceedings

Search
Proceedings
recording
statements u/s
132(4)

Party in
Person

Types of POA

General POA

For all matters in the ordinary course

No implied authority to do anything outside ordinary scope.

Special POA

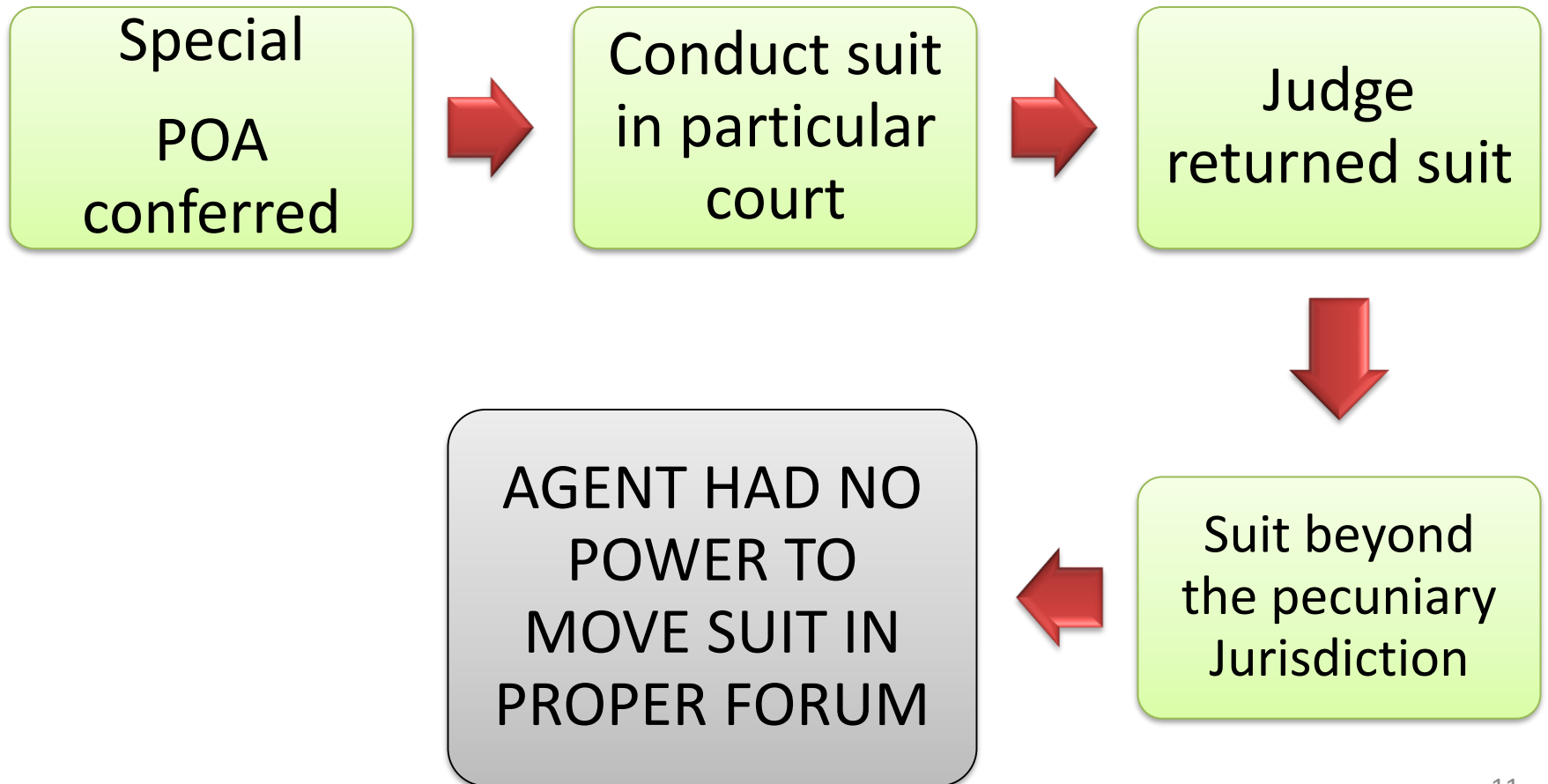
Particular Transaction or Act

Implied authority to do anything for proper and effective performance.

**DASAPPA NAYANIM
VS.
RABHA RAMIAH**

**IN THE HIGH COURT OF MADRAS
AIR 1952 Mad. 559**

Proceedings before District court of Tirupathi



**JANKI PARSHAD SINGH
VS.
YAHIA HASSAIN**

IN THE HIGH COURT OF CALCUTTA
Decided On: 07.07.1911

HELD AS UNDER



Drafting of POA

BOWSTEAD ON POWER OF ATTORNEY

1

- Operative part of the POA is controlled by the Recitals.

2

- Authority for **particular act** followed by general words is restricted to proper performance of the **such act only**.

3

- Special POA construed as enlarging the special powers, when necessary and only when necessary for that purpose

AIR 1914 BOM. 1992

- Power to dispose of property does not mean power to mortgage property.

Examples

Power granted to manage properties doesn't extend to endorsing bills, general words are to be interpreted having reference to managing the properties.

An agent cannot by his act bind the principal to a larger extent than he is empower through POA.

Power granted to complete all contacts which are necessary for a specific object includes authority to collect payment as it is necessary and incidence to completion of contract.

“Recitals is the Operative Part of POA”
HOW?

DRAFTING ERROR CASE

SYNDICATE BANK, BANGALORE

VS.

I.K. AMITHA AND ORS.

HIGH COURT OF KARNATAKA

CLAUSES OF THE POWER OF ATTORNEY

- *We further appoint him and authorise him to borrow money by mortgaging or on the security of any property that stands in the name of or belonging to our late father K.N. Iyyanna Setty, inclusive of our right and interest in the said Property.*
- *We further appoint him to sell any property or to mortgage any property or to give any property as security to any court or bank or to any concern, that stands in the name of our father and to recover from the purchaser or purchasers the sale amount and to execute sale deeds, mortgage deeds On Demand Pronote.*

Donee of POA (Defendant No. 1)

- Acted upon the powers vested through Power of Attorney and withdraws the money by mortgaging land involved for “**business purpose**” and to discharge his “**personal dues**”.
- Default in repayment made by donee, Bank filed suit against all the Donors and Donee of POA.

Donors of POA

(Defendants no. 2-9) claims as under

- Powers was Conferred in favour of Donee only to discharge the liabilities of deceased father.
- Funds borrowed for “any other purpose” by donee cannot be coupled with core subject for what of power of attorney is conferred.
- Donors are not responsible for default in repayment to bank against donee’s personal dues.

Counsel of Donors (Respondent no. 2-9) of POA claims as under

- That Donors of POA under any circumstance cannot be held liable for default made by donee, as the Trial Court Judges had concluded that there is no equitable mortgage against all the donors.

SYNDICATE BANK'S CONTENTION (Petitioner in this case)

- Agreed that there was no equitable mortgage against all the donors.
- This court in interim order held that Donee had no power to create “equitable mortgage” as per recitals of POA.
- Necessary to follow mortgage deed created by Donee to bind all Donors involved.
- By plane reading of recitals of POA one it

HIGH COURT'S FINDING

Donors of POA failed to submit corroborative evidence to prove their intention of giving POA for restrictive purpose.

Finding noted against the Donee has not been challenged by him.

Finding recorded by the Trial Court as to non-liability of donors is set aside.

HIGH COURT ORDER

- Suit was decreed against donee and all Donors of POA, all are directed to deposit decretal amount along with 6% interest p.a. within 6 months.
- On failure, it will be open to the Bank to move for drawing up the final decree to bring for sale of land involved.

POWER OF ATTORNEY AS “EVIDENCE”
UNDER SECTION 85 OF INDIAN EVIDENCE
ACT.

AIR 1950 All
524

Notarization is not merely attestation but identification of Executor.

Unless it is rebutted POA admissible as Evidence.

AIR 1970 Mani
57

Photocopy of POA cannot be admitted as evidence unless original produced.

ACELEGAL

AIR 1984 Del.
363

Section 85 of Evidence Act is very Important and operates where :-

POA must be executed before Notary

Authenticated by a Notary Public.

AIR 1976 SC 263

- If POA properly notarised by a Notary public then it is open to court to presume that such POA validly executed.
- Notarization is equivalent to affidavit to identify by Notary Public.
- Court may take cognizance of seal of notary u/s. 57 Contract Act.

3 Step Trick to Draft Proper POA

STEP - 1 : CHOOSE THE CORRECT DEED

General Powers of Attorney

(Less preferred)



Risk that the agent will overstep the authority.

Control over the General terms used and
Mention General objective precisely

Special Power of Attorney



Risk that stated authorities is too narrow;
attorney will not be able to accomplish
your intended purpose.

Determine the
Powers you wish
to grant

STEP - 2: RECITALS

Include the formal statement that parties are mentally competent.

Identify agent by name

Specify powers to wish to confer

Detailing

Specify any beginning and ending dates

STEP - 2: RECITALS (Cont..)

Implication of section 188 of Indian contract Act

An agent having an authority to do an act has authority to do “every lawful thing” which is necessary in order to do such act.

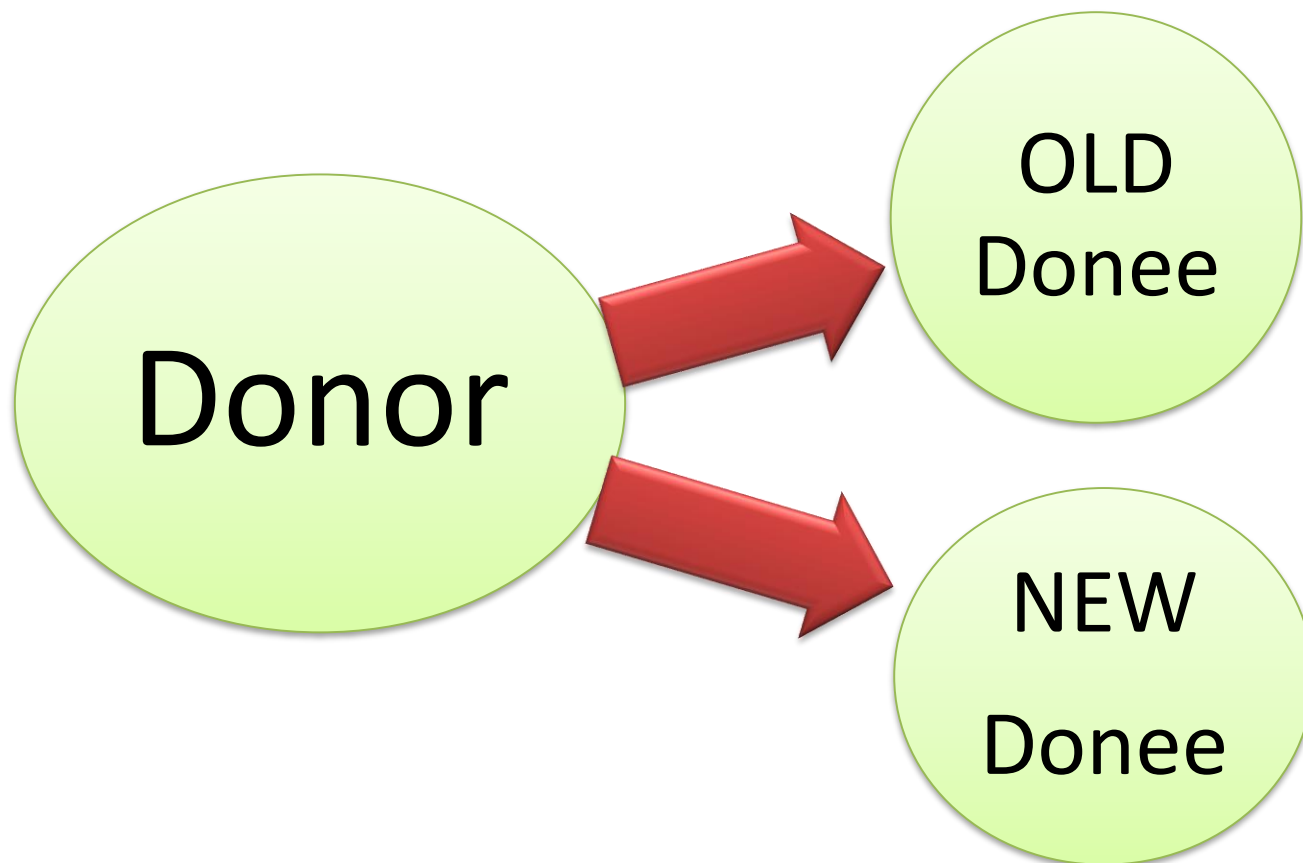
STEP – 3 CONFERRING POWERS

- Attorney's in substituting others in their place, cannot give any greater authority than that which they themselves are clothed.



No Enlargement

STEP – 3 CONFERRING POWERS (Cont..)



Can be Enlarged

Determination of POA

Statutory

Default by Donee

Termination under Contract Act

Contractual

Deed void to either parties

Cancellation under Specific relief Act.

Completion

Implied termination

REVOCABILITY AND IRREVOCABILITY

POWER OF ATTORNEY

Revocability

Without
consideration

Irrevocability

With consideration / Authority
coupled with interest

Section 201 to 247
Indian Contract Act, 1872

AIR 1994 Karn. 133

- Mentioning “Irrevocable” does not make POA irrevocable.
- POA recognising and recording the interest of attorney in the property cannot be invoked or terminated.

(Subject to section 201-210 of the Indian Contract Act)

AIR 1985 AP 30

- If the interest of agent is created in the property or subject matter of agency as a result of proceedings arising after the exercise of power then the agency is revocable.

Implication of Section 202 of Contract Act

POA & MINOR

Guardian gave POA on behalf of minor, such POA cannot be terminated on attainment of majority by minor, can be determined only u/s. 201 and other relevant sections of contract Act, 1872.

A POA holder of a minor cannot institute a suit of title where POA was for management of minor's property. Any statements or admission made by such agent in a suit against minor's title of property is not valid.

POA TO VARIOUS PERSON

- POA must be executed in favour of single person, it cannot be executed in favour of several persons. *AIR 1996 SC 3318*
- POA cannot be given in favour of several persons for dealing with of a single plot. It must be given in favour of a single person. *(1996) 3 SCALE 680.*

Registration of POA

- Through there is no provision in the Registration Act, which makes registration of Spl. POA compulsory, a court is not bound to presume its genuineness unless it is registered. *AIR 1979 Cal. 979.*
- Where any rights are assigned to the donee by donor, such POA requires mandatory registration. *ILR (1979) 3 Bom. 312.*

Revocation not known to Donee

- Donee shall not be liable to third party for any act done by him.

Revocation not known to Third Party

- Third party can enforce transaction against Donor as if such revocation has not taken place.

AIR 1971 SC 76

- Ratification of POA is thrown back to the date of act done.
- Agent put himself in position as if he had authority to do the act at the time act was done.

1983 KLT 1013

- POA found defective and second POA was executed ratifying all actions done by virtue of earlier POA.
- Such Ratification thrown back of act done thereby validating the earlier Act.

Effect of Death of Donor/Donee.

Donor's Death

Terminates immediately

Not known to Donee may act as agent till official notification

Donee is liable to third person in case he acts in incognito.

Donee's Death

Terminates immediately

Unless deed provide co-agent or successors.

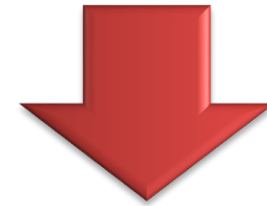
CANCELLATION OF POWER OF ATTORNEY

Section 31 of The Specific Relief Act, 1963

Any person against whom a written instrument is void or voidable



Who have reason to believe that such instrument, if left outstanding may cause him serious injury



Court may, in its discretion, so adjudged it and order it to be delivered up and cancelled.



May sue to have it adjudged void and voidable.

Section 31 of The Specific Relief Act, 1963

- ❑ If the instrument has been registered under the Indian Registration Act,
 - ❑ Court shall also send a copy of its decree to the officer in whose office the said instrument has been registered;
 - ❑ such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Special Consideration

Vakalatnama and Power of Attorney

one and same thing in the eyes of law?

IF yes

Why

IF No

Why

Vakalatnama Advocate Act

Sec.2(u) It includes memo of appearance or any other document by which an advocate is empowered to appear or plead before any court, tribunal or other authority.

Power of Attorney POA Act

Section 1A –
Definition in The Power of Attorney Act, 1882, includes any instrumentals empowering a specified person to act for and in the name of the person executing it.

**Himalayan Co-operative Group
VS.
Balwan Singh.**

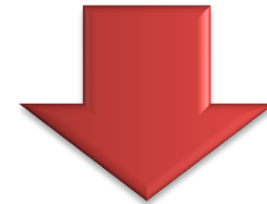
Supreme court of India.

Himalayan Co-operative Group VS. Balwan Singh.

Default made by the member in payment against allotment.



After various reminders society expelled the defaulting member – registrar confirmed resolution.
Matter went up to HC



Advocate appearing on behalf of Society accepted the concession request of defaulting members.



Defaulting member requested for concession - Newly constructed residence in same society.

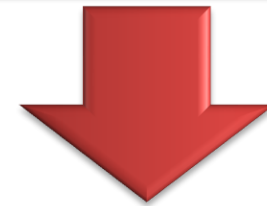
Himalayan Co-operative Group VS. Balwan Singh. (Cont..)

Society to Advocate

We did not authorise you
to negotiate on our
behalf.



Society challenged HC's
Order before Apex Court.



Apex Court

Necessary to obtain
expressed authority for
Advocate
before making any
concession on behalf of
client.

Direction of Writ Court is
quashed and.



Apex Court

**“ Advocate”
in the discharge of his duty
knows but one person in the world
and
that person is his client.**

Various Case

- Power of attorney holder cannot, unless he is an enrolled Lawyer, appear in the any court on behalf of anyone.

M/s. Shree Chem V/s. The Rajasthan Financial Corp.

- A natural person can in person argue his/her own case personally but he/she cannot give a POA to other to appear on his/her behalf.
- **[2011] (3) KLT 499(SC)**

Attorney at Law

Official name of **Litigation Lawyer**

Licensed to act on their client's behalf and represent them in court.

Attorney in fact

A person who is authorized to perform **business-related transactions.**

A person must have the Principal's sign a power of **attorney** document.

POA to "Attorney at law" is Vakalatnama.

Letter of authority and Power of Attorney

one and same thing in the eyes of law?

IF yes

Why

IF No

Why

Letter of Authority

Simple Task

Do not prescribe manner in which task has to be completed.

Very Very Specific Purpose

Eg: Operating Bank Account.

Power of Attorney

Big Transactions

May Prescribe the manner in which task has to be completed.

General + Specific Purpose

Eg:- 1. General POA:- Representation in Department .
2. Special POA :- Selling immovable property

Acelegal

Bharat Agarwal
Managing Partner

