

**IN THE HIGH COURT AT CALCUTTA  
(Ordinary Original Civil Jurisdiction)  
ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**IA No: GA 1 of 2021**

**In CS 149 of 2021**

**KAHM Industries Private Limited & Ors.**

**Versus**

**Punalur Paper Mills Limited.**

***AND***

**IA No: GA 3 of 2022**

**In CS 149 of 2021**

**KAHM Industries Private Limited & Ors.**

**Versus**

**Punalur Paper Mills Limited.**

Mr. Jishnu Saha, Sr. Adv.

Mr. Sakya Sen

Mr. Sukrit Mukherjee

Mr. S.R. Kakrania

Mr. T. Kakrania

Mr. K. Sharma

... For the plaintiffs.

Mr. Souradipta Banerjee

Mr. Asif Sohail Tarafdar

Mrs. Fatima Hassan

... For the defendants.

Hearing Concluded On : 03.05.2023

Judgment on : 05.07.2023

**Krishna Rao, J.:**

1. The plaintiff has filed the present application being G.A No. 1 of 2021 praying for an order of injunction restraining the respondents from giving any effect or further effect of the purported deed of revocation dated May 11, 2021 of the Power of Attorney dated November 21, 2011 and further orders.
2. The defendant has filed an application being G.A 3 of 2022 praying for an order of stay of all further proceedings in respect of G.A No.1 of 2021 in CS No. 149 of 2021 till the disposal of Title Suit No. 314 of 2021, T.S 613 of 2021 and T.S 430 of 2022 pending before the Learned 10<sup>th</sup> Bench, City Civil Court, at Calcutta.
3. As applications being G.A 1 of 2021 and G.A 3 of 2022 is connected with each other and thus both the applications are taken up together for adjudication.
4. Title Suit No. 314 of 2021 is the first suit filed by M/s Lindsey Towers Private Limited (Now known as KAHM Industries Private Limited herein

after referred to as KAHM) against Punalur Paper Mills Limited and

Others praying for the following reliefs:

*“a) a decree for declaration that the said agreement dated 15.05.10 is still in force in subsisting and is binding upon the parties and the defendant no. 1 including rest of the defendants shall have no right to close the said account i.e. Schedule B property in utter violation of the said agreement dated 15/5/2010;*

*b) a decree for declaration that the plaintiff has every right to operate or maintain the bank to operate or maintain the bank account of the schedule “B” property;*

*c) a decree for permanent injunction restraining the defendants and their men and agents from closing the said account i.e. schedule “B” property and also restraining them from creating any obstruction for maintain and operating the bank account of the schedule “B” property by the Plaintiff;*

*d) temporary injunction;*

*e) cost of the suit;*

*f) any other relief or reliefs.”*

- 5.** Subsequent to filing of Title Suit No. 314 of 2021, Punalur Paper Mills Ltd. (herein after referred to as Punalur) had filed another suit being Title Suit No. 613 of 2021 against IndusInd Bank Ltd. praying for following reliefs:

*“a) a decree for declaration that the plaintiff alone is entitled to operate its own account standing in the name of the plaintiff through its authorized signatory Sri. T.K. Sundaresan, the Chairman and Managing Director of the plaintiff company in respect of the said account i.e. Bank Account being No. 0015-608737-060 (previous Account No. 200001818875 with Ms. Indus Ind Bank, 3A, Upper Wood Street Branch, Police Station-Hare*

*Street. Kolkata-700017 which is more fully and particularly described in the Schedule below in accordance with the resolutions of the plaintiff company;*

*b) a decree for declaration that the defendant bank has no authority to permit persons who are not associated to the plaintiff company in any manner whatsoever to operate the said Bank Account being No. 0015-608737-060 (previous Account No. 200001818875) with M/s. Indus Ind Bank, 3A, Upper Wood Street Branch, Police Station-Hare Street, Kolkata-700017 which is more fully and particularly described in the Schedule below.*

*c) a decree for permanent injunction restraining the defendant from permitting any person other than the plaintiff represented by its authorized signatory Sri. T.K. Sundaresan, the Chairman and Managing Director of the plaintiff company in accordance with the resolution of the Board of Directors of the plaintiff company dated 25<sup>th</sup> February, 2021 and the subsequent resolutions of the plaintiff company, if any, to encash and/or transfer any amounts from the said Bank Account being No. 0015-608737-060 (previous Account No. 200001818875) with M/s. Indus Ind Bank, 3A, Upper Wood Street Branch, Police Station – Hare Street, Kolkata – 700017 which is more fully and particularly described in the Schedule below;*

*d) Costs and Advocate's fees;*

*e) Such other relief or reliefs as the plaintiff is entitled to for the ends of justice."*

- 6.** After filing of the above-mentioned two suits i.e. TS No. 314 of 2021 and TS No. 613 of 2021, KAHM has filed another suit being CS No. 149 of 2021 against Punalur praying for following reliefs:

*"(a) Decree for delivery up and cancellation of the purported deed of revocation dated May 11, 2021 of the Power of Attorney dated November 21, 2011 upon adjudging the same to be void.*

*(b) A Decree of perpetual injunction restraining the defendant from in any manner relying on the said purported deed of revocation dated May 11, 2021 of the Power of Attorney dated November 21, 2011 or from making any representation on the basis thereof or from purporting to cancel or revoke the power of attorney dated May 15, 2010 or from making any representation to such effect to any person or persons or entity authority whatsoever.*

*(c) Injunction;*

*(d) Receiver;*

*(e) Attachment.”*

7. In Title Suit No. 314 of 2021, KAHM had also filed an application for injunction restraining Punalur and other defendants from closing the designated bank account and restraining them from creating any obstruction in the operation of the bank account. In the said application, the learned Trial Court passed an ad-interim order of injunction dated March 6, 2021 wherein Punalur and other defendants were restrained from closing bank account till April 6, 2021 and the said interim order continued for some time. Soon thereafter on May 11, 2021, Punalur revoked power of attorney granted earlier in favour of Kunal Dalmia and Ranoj Roy on May 15, 2010 and October 19, 2011.
8. In Title Suit No. 613 of 2021, Punalur had also filed an application for injunction on May 21, 2021, the IndusInd Bank was restrained from permitting any person to withdraw, encash or transfer any amount from the said bank account till June 19, 2021. It was also observed that proper adjudication of TS No. 314 of 2021 would be heard

analogously with TS No. 613 of 2021 and Punalur was also directed to add M/s Lindsey Towers Private Limited as defendant No. 3. In view of the order dated May 21, 2021, IndusInd Bank refused KAHM to operate the bank account and disallowed withdraw of any compensation amount. After being aware of the interim order dated May 21, 2021, KAHM had preferred an appeal before the Division Bench of this Court being FMAT No. 377 of 2021. The Hon'ble Court had set aside the interim order dated May 21, 2021 and the learned Trial Court was directed to hear the injunction application afresh in the presence of the parties and whether KAHM is to be added as party in the suit was left open to be decided by the learned Trial Court. While remanding back for hearing of the injunction application, the Hon'ble Court had directed that during the intervening period neither party *"will act in such a manner so as to make the interim application before the court below infructuous"*. In the meantime on the basis of the request made by KAHM the IndusInd Bank on June 23, 2021 encashed a cheque amounting to Rs. 9,05,70,001/- in the account of KAHM. On the prayer made by Punalur in TS No. 613 of 2021, the learned Trial Court had added KAHM as defendant. By an order dated June 30, 2021, the learned Trial Court observed that neither party would be allowed to operate the bank account in any manner whatsoever till the disposal of injunction application as well as the application filed under Section 151 of the Code of Civil Procedure.

9. By an order dated September 22, 2021, the learned Trial Judge had disposed of the injunction application filed by Punalur by passing following order:

*“It appears that the entire proceeding initiated by the Plaintiff [Punalur] is a deceitful action on the part of the Plaintiff and the same Director, who has taken part in Conveyance and Agreement, as well as Power of Attorney, came before this court for relief which he is not entitled and this case has no leg to stand upon. It is a futile attempt by Plaintiff, and this injunction application must be ended into dismissal. Hence, as an interim measure, to preserve the amount deposited in bank, it was ordered that neither party was allowed to operate the bank account in any manner whatsoever till the disposal of this case and well as TS o. 314 of 2021.”*

10. Being aggrieved with the order dated September 22, 2021, both the parties have preferred appeal and the Hon’ble Division Bench by a common order has disposed of all appeals on April 5, 2022, by passing following order:

*“The right to claim compensation in favour of KAHM arises from the deed of conveyance read with the agreement dated 15th May, 2010. The deed of conveyance is required to be read as a whole in order to find out the intention of the parties. The recitals in the deed of conveyance clearly shows that KAHM would solely and exclusively be entitled to receive an appropriate amounts of compensation now pending or as may hereafter become payable on account of and in respect of the acquisition proceedings. It clearly refers to the present and the future right of the KAHM to receive the said compensation and gives power to KAHM to continue such proceedings in the name of Punalur but at the expense of KAHM.*

*This was reiterated after there was a change of shareholding in Punalur on 15th May, 2010. In*

*fact, an irrevocable power of attorney was executed in favour of Kunal and Ranoj. The said power of attorney holders pursued the proceedings on behalf of Punalur that had ultimately resulted in a decree being passed in favour of Punalur being L.A. case no. 38 of 2007 for an amount in excess of Rs. 27 crores.*

*Punalur was unable to demonstrate before us that they had pursued the aforesaid proceedings at their own cost and expenses. Punalur has not denied the execution of the deed of conveyance, the agreement dated 15th May, 2010 and the power of attorney which was revoked only on May 11, 2021. It is interesting to note that the power of attorney holders represented Punalur in the writ petition filed by the State of West Bengal being FAT no.473 of 2019 in which an order was passed for the release of part of the compensation amount to Punalur. These facts conclusively prove for the purpose of the interlocutory application that the power of attorney was acted upon and KAHM has conducted such proceeding for and on behalf of Punalur.*

*The question arises whether this money should exclusively belong to KAHM or Punalur could have a claim on the said money. The learned Trial Judge noticing that Mr. T.K. Sundaresan, the Managing Director of Punalur, who was one of the signatories to the agreement dated 15th May, 2010, power of attorney dated 15th May, 2010 and 21st November, 2011, signed the plaint on behalf of Punalur had taken a completely contrary stand in the proceeding with a view to defeat the right of KAHM observed that the proceedings initiated by Punalur was deceitful and frivolous.*

*Initially Punalur did not file a suit for cancellation of the deed of conveyance dated 5th April, 2003. It is difficult for Punalur at this stage to contend that they were not aware of the execution of the deed of conveyance or subsequent documents giving exclusive rights to KAHM to receive and deal with the compensation amount.*

*An argument has been advanced that Kunal Dalmia took an active part in the deed of conveyance and the said property was sold at a*

*meagre consideration. However, nothing prevented the majority shareholders after assuming control of Punalur to raise the issue and sue KAHM in cancellation of the deed of conveyance.*

*On the contrary the majority shareholder have agreed to execute an irrevocable power of attorney in favour of Kunal and Ranoj and required the power of attorney holder to prosecute and defend all actions against Punalur concerning the property in question at the cost of KAHM.*

*This clearly establishes that the cancellation of the power of attorney is prima facie illegal as it is an agency coupled with interest. Even if one may be persuaded to ignore the other claims of KAHM, the right that accrued in favour of KAHM by reason of acts done in pursuance of the power of attorney needs to be preserved.*

*At the same time Punalur cannot be made to suffer for Income Tax payable on the compensation amount as Punalur is not receiving the money and accordingly it cannot be treated as their income on which any tax can be levied.*

*Mr. Saha, learned Senior Counsel appearing on behalf of KAHM has submitted that no demand so far has been raised by Punalur for payment of Income Tax dues and KAHM is willing to reimburse Punalur for any amount payable towards Income Tax in respect of the suit property.*

*The KAHM had in the meantime realised a sum of Rs.9,05,70,001.50/- on the basis of the order passed by the Co-ordinate Bench on 4th January, 2021 in FAT No.473 of 2019. It is undisputed that the power of attorney was revoked much later on 11th May, 2021 and at that time KAHM was entitled to the said amount. A suit filed subsequently cannot deny the payment of such compensation amount without Punalur establishing their right to receive the said compensation amount on revocation of the power of attorney. However, the learned Trial Court did not permit the parties to utilize the compensation amount till the disposal of the suit.*

*With a view to hold the ring pending final adjudication we permit KAHM to retain and utilize the said amount upon furnishing security to the satisfaction of the learned trial Court. In so far as the balance sum of Rs.9,05,70,001.50/- deposited in connection with LA case no.38 of 2007 we are not inclined to direct the Registrar General to release the said amount at this stage, on consideration of the decision of the Hon'ble Supreme Court in Baburao vs. State of Maharashtra, reported in 2017(11) SCC 333.*

*Since we are of the prima facie view that the cancellation of the power of attorney was illegal and the documents executed in favour of KAHM are establishing a clear right to receive the compensation, at this stage we do not direct KAHM to return the said sum of Rs.9,05,70,001.50/- to Punalur.*

*Mr. Jishnu Saha, learned Senior Counsel appearing on behalf of the KAHM has strenuously argued that the suit filed by Punalur Paper Mills Limited is not maintainable in law and expressly barred by limitation under Order II Rule 2 of the Code of Civil Procedure. It is submitted that the application for rejection of the plaint is pending before the learned trial Court; we request the learned trial Judge to dispose of the said application expeditiously, without being influenced by any observations made in this judgment.*

*The impugned order is modified to the aforesaid extent.*

*The appeals and cross appeals along with all the connected applications are accordingly disposed of."*

- 11.** Being aggrieved with the order dated September 22, 2021, Punalur had preferred a Civil Appeal No. 6945 of 2022 and the same was disposed of by the Supreme Court on September 26, 2022 by passing the following order:

*“The Direction in the impugned order dated 05.04.2022 that the respondents would furnish security to the satisfaction of the trial court for Rs. 9,05,70,001.50/-, must be complied immediately and preferably within a period of two weeks from the date copy of this order is filed before the trial court. The security to be furnished to the satisfaction of the trial court should be a solvent security, which can be encashed and enforced in case of default.*

*Insofar as balance amount of Rs.9,05,70,001.50/- is concerned, the said amount would not be withdrawn. This direction is subject to the decision in the suit.*

*If any further amount is deposited in the bank account in IndusInd Bank Ltd., the amount would not be withdrawn by any party without permission of the Court.*

*The respondents state that they would be disclosing the compensation received on account of acquisition of the property as income taxable in their hands. The respondents would file an affidavit to the said effect before the trial court. The statement and affidavit would be without prejudice to the rights and contentions of the appellant. If any tax liability arises, in view of the fact that compensation has been paid or made in the name of appellant, the appellant would be entitled to take recourse to appropriate proceedings.*

*We clarify that the observations made in the impugned order are only for the purpose of disposal of the appeal before the High Court and would not be treated as binding and conclusive findings. The trial court would determine the rights and pleas raised by the parties in accordance with law and based upon the evidence led by the parties.”*

- 12.** On May 15, 2010 an agreement was entered between Punalur and KAHM which not only acknowledges that the third parties became the majority shareholder of Punalur but also reaffirms and reiterates that

KAHM would have the right to prosecute and defend all litigations and proceedings concerning the acquisition proceedings and would have the exclusive right to receive and recover the compensation amount in respect of portion of the suit property which were the subject-matter of litigation in the name of Punalur but at its cost and for such purposes, KAHM would be entitled to operate a separate Bank account being No. 0015-608737-060 (previous Account No. 200001818875) with IndusInd bank situated at 3A, Upper Wood Street Branch, Kolkata in the name of Punalur for the purpose of depositing, realising and encashing the amount of such compensation and any other amount as may be received in respect of the portion of the suit property. The agreement also provided that Punalur would execute an irrevocable Power of Attorney in favour of KAHM or its nominee authorising them to represent Punalur in all litigations. The said agreement was signed by the majority shareholders of Punalur including Mr. T.K.Sundaresan, Chairman, whole time Director and one of the plaintiff in suit No. 613 of 2021.

- 13.** By virtue of the minutes of meeting of the Board of Directors dated October 19, 2011, Shri T.K. Sundaresan being the whole time Director of Punalur executed a power of attorney in favour of Mr. Kunal Dalmia and Mr. Ranoj Roy Chowdhury as the lawful Attorney of the Punalur. In terms of the agreement dated May 15, 2010 and the Power of Attorney executed in favour of the aforesaid two persons, compensation proceedings were pursued and out of several proceedings initiated, in

one of such land acquisition proceeding concerning acquisition of the basement and ground floor of the property in question, a decree was passed on December 6, 2018 by the learned District Judge, Alipore in respect of LA Case No. 38 of 2007 for an amount of Rs. 27 crore. The State of West Bengal initiated an appeal, against the said award and during the pendency of the appeal on the submission made by the State of West Bengal that there was a mistake in calculation, instead of Rs. 27 crore, the figure should be Rs. 18,11,40,003/- and the Hon'ble Division Bench permitted Punalur to withdraw 50% of an amount without security and for release of the balance 50% of Rs. 18,11,40,003/- upon furnishing security was left open to be decided, if any, formal application is made by Punalur. As per the aforesaid order, Mr. Ranoj Roy Chowdhury being one of the Power of Attorney holder of Punalur received the demand draft of Rs. 9,05,70,001.50/- on June 1, 2021 and deposited the payment in the designated bank account.

- 14.** The dispute started after the order dated January 4, 2021 when the amount was withdrawn after depositing the said amount in the designated account. In the month of March' 2021, KAHM filed a suit being Title Suit No. 314 of 2021 praying for declaration that the agreement dated May 15, 2011 is still valid and subsisting and binding upon defendant no. 1 including all defendants. The defendants have no right to close the said account mentioned in Schedule-B. KAHM has also prayed for injunction restraining Punalur & other defendants from closing the designated account and restraining from creating any

obstruction in the operation of the account. On 6<sup>th</sup> March, 2021, the Trial Court passed an ad interim order restraining Punalur and other defendants from closing the bank account. On May 11, 2021 Punalur revoked Power of Attorney and on the same day Punalur had also filed a suit being Title Suit No. 613 of 2021 praying for declaration that Punalur alone is entitled to operate the said bank account standing in the name of Punalur through its authorized signatory T.K Sundaresan. KAHM has also filed the present suit being CS No. 149 of 2021 praying, inter alia, for cancellation of the purported deed of revocation dated May 11, 2021 of the Power of Attorney dated November 11, 2011 and restraining the defendants relying on the said purported revocation deed dated May 11, 2021 or making any representation on the basis thereof.

- 15.** Kunal Dalmia, has now filed a suit being C.S. No. 169 of 2021 against Nelson Sebastian, Director of Punalur and T.K Sundaresan, Managing Director of Punalur praying for a decree for a sum of Rs. 10 crore and allied prayers. In the said suit, Mr. Kunal Dalmia has also filed an application being GA No. 1 of 2021 praying for injunction restraining respondents from publishing or circulating any letter, material, correspondence or article against the petitioner which are per se defamatory and false.
- 16.** Now the question, whether the application filed by KAHM being G.A No. 1 of 2021 with all further proceeding is required to be stayed till the disposal of Title Suit No. 314 of 2021, Title Suit No. 613 of 2021 and

Title Suit No. 430 of 2022 pending before the learned 10<sup>th</sup> Bench City Civil Court at Calcutta.

17. Mr. Banerjee relied upon the decision in the case of **Aspi Jal & Another** reported in **(2013) 4 SCC 333** wherein the Supreme Court held that:

*“9. Section 10 of the Code which is relevant for the purpose reads as follows:*

*“10. Stay of suit.—No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed, or in any court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.*

*Explanation.—The pendency of a suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action.”*

*From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10 i.e. “no court shall proceed with the trial of any suit” makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of*

*the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject-matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.*

**10.** *The view which we have taken finds support from a decision of this Court in National Institute of Mental Health & Neuro Sciences v. C. Parameshwara [(2005) 2 SCC 256] in which it has been held as follows:*

*“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are ‘the matter in issue is directly and substantially in issue’ in the previous instituted suit. The words ‘directly and substantially in issue’ are used in contradistinction to the words ‘incidentally or collaterally in issue’. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.”*

Mr. Banerjee relied upon the decision in the case of **Gulabchand Chhotalal Parikh** reported in **AIR 1965 SC 1153** wherein the Hon'ble Supreme Court held that:

*"40. The expression 'Court of competent jurisdiction' was construed to mean 'a Court which had jurisdiction over the matter in the subsequent suit in which the decision was used as conclusive' or, in other words 'a Court of concurrent jurisdiction. In considering this matter, the Privy Council referred to the fact that in this country there were Courts' of various grades with different pecuniary limits of jurisdiction, that a suit had to be instituted in the Court of the lowest grade competent to try it and that it would be improper if a judgment of an inferior Court was to operate as res judicata in a suit in a superior Court, and observed at p. 203*

*"By taking concurrent jurisdiction to mean concurrent as regards the pecuniary limit as well as the subject matter, this evil or inconvenience is avoided; and although it may be desirable to put an end to litigation, the inefficiency of many of the Indian Courts makes it advisable not to be too stringent in preventing a litigant from proving the truth of his case. It appears to their Lordships that if this case had arisen before the passing of Act X of 1877, the High Courts in India would have rightly held that the decision of the Extra Assistant Commissioner in the first suit was not conclusive as to the amount of the principal sum due on the bond."*

*and, after quoting s. 13, said :*

*"The intention seems to have been to embody in the Code of Procedure, by sections 12 and 13, the law then in force in India, instead of the imperfect provision in section 2 of Act VIII of 1859. And, as the words of the section do not clearly show an intention to alter the law, their Lordships do not think it right to put a construction upon them which would cause an alteration."*

*This shows that the general law of res judicata was applied to suits in this country despite a specific provision about it in S. 2 of Act VIII of 1859."*

Mr. Banerjee relied upon the decision in the case of **Church of Christ Charitable Trust and Educational Charitable Society** reported in **(2012) 8 SCC 706** wherein the Hon'ble Supreme Court held that:

*“20. In a recent decision of this Court in Suraj Lamp and Industries (P) Ltd. (2) v. State of Haryana [(2012) 1 SCC 656 : (2012) 1 SCC (Civ) 351] , the scope of the power of attorney has been explained in the following words:*

*“20. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.*

*21. In State of Rajasthan v. Basant Nahata [(2005) 12 SCC 77] this Court held:*

*‘13. A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.*

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*52. Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers of Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit. He acts in a fiduciary capacity. Any act of infidelity or breach of trust is a matter between the donor and the donee.'*

*An attorney-holder may however execute a deed of conveyance in exercise of the power granted under the power of attorney and convey title on behalf of the grantor."*

- 18.** Mr. Banerjee relying upon the above judgments submitted that Power of Attorney is not an instrument of transfer with regard to any right, title or interest in an immovable property. The Power of Attorney is creation of an agency whereby the guarantor authorises the guarantee to do the acts specified therein, on behalf of the guarantor, which when executed will be binding on the guarantor as if done by him. It is revocable or terminable at any time unless it is made in such a manner known to law. He submitted that even an irrevocable attorney does not have effect of transferring title to the guarantee.

He further submitted that there is an identity of the matter in issue and all the matters connected with same agreement and Power of Attorney and parties are also same and the whole of the subject matters in all proceeding is identical.

19. Mr. Saha relied upon the decision reported in **(1998) 5 SCC 69 (Indian Bank-vs- Maharashtra State Bank Cooperative Marketing Federation Ltd.)**, wherein the Supreme Court held that:

*“7. Section 10 of the Code prohibits the court from proceeding with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit provided other conditions mentioned in the section are also satisfied. The word “trial” is no doubt of a very wide import as pointed out by the High Court. In legal parlance it means a judicial examination and determination of the issue in civil or criminal court by a competent Tribunal. According to Webster's Comprehensive Dictionary, International Edition, it means the examination, before a tribunal having assigned jurisdiction, of the facts or law involved in an issue in order to determine that issue. According to Stroud's Judicial Dictionary (5th Edn.), a “trial” is the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal. Thus in its widest sense it would include all the proceedings right from the stage of institution of a plaint in a civil case to the stage of final determination by a judgment and decree of the court. Whether the widest meaning should be given to the word “trial” or that it should be construed narrowly must necessarily depend upon the nature and object of the provision and the context in which it is used.*

*8. Therefore, the word “trial” in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to “proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit”. The object of the prohibition contained in Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the latter suit nor does it create any substantive right in the matters. It is not a bar to the institution*

*of a suit. It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the latter suit with the earlier suit, or appointment of a receiver or an injunction or attachment before judgment. The course of action which the court has to follow according to Section 10 is not to proceed with the “trial” of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word “trial” in Section 10 is not used in its widest sense.”*

Mr. Saha relied upon the decision reported in **(2004) 4 SCC 697 (Deoraj -vs- State Bank of Maharashtra and Others)**, wherein the Supreme Court held that:

**“12.** *Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would*

*cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.”*

Mr. Saha relied upon the decision reported in **2005 SCC Online Cal 342 (Hindustan Development Corporation -vs- Modiluft Limited & Ors.)**

wherein the Hon’ble Division Bench of this Court held that:

*“38. The other point on the basis of which the learned Judge has dismissed the application is that the orders sought for was in the nature of main relief by way of an interlocutory application. It is well-settled that in given circumstances Court can always pass interim relief in the nature of final relief though such a power is required to be used sparingly and with utmost caution but it cannot be contended that the Court is precluded from passing an order in an interlocutory application which would result in granting a final relief.”*

**20.** Mr. Saha Learned Senior Advocate relying upon the aforesaid judgments submitted that the object of the prohibition contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. He submitted that the provision is in the nature of a rule of procedure and does not affect the jurisdiction of the Court to entertain and deal with the later suit nor does it create any substantive relief in the matter. He further submitted that Court has no bar passing of interlocutory orders such as injunction, attachment before judgment or appointment a receiver.

**21.** Title Suit No. 314 of 2021 filed by KAHM cause of action of the suit is described at paragraph 14 wherein it is mentioned that *“the cause of*

*action of the suit arose from the above mentioned bundle of facts and lastly on February 19, 2021 as and when the defendant No.1 had threaten to close the suit property in collusion with the other defendant with the intention frustrate the terms and conditions of the agreement dated May 15, 2010.” In Title Suit No.613 of 2021 filed by Punalur, the cause of action of the suit described at paragraph 21 wherein it is mentioned that “the cause of action of the aforesaid suit arose on February 25, 2021 when the directors of the plaintiff company unanimously resolved to appoint Mr. T.K Sundaresan, the Chairman, Managing Director of the plaintiff company as authorised signatory in the bank and lastly on April 16, 2021, when the defendant refused to accept the request of the plaintiff.” In CS No. 149 of 2021 filed by KAHM, the cause of action of the suit described at paragraph 33 wherein it is mentioned that “the cause of action of the instant suit arose on May 11, 2021 when the defendant purported to illegally revoke attorney dated November 21, 2011 by the purported date of revocation dated May 11, 2021 and sought to make wrongful and misleading representation on the basis thereof in an attempt to interfere with and impair the rights of the plaintiffs.”*

- 22.** Upon combined reading of all cases filed by both the parties, it appears that all the suits related to the agreement entered between the parties on May 15, 2010 and the Power of Attorney dated November 21, 2011 and the purported revocation of power of attorney dated May 11, 2021. Initially KAHM had initiated Title Suit No. 314 of 2021 wherein

injunction was also moved and subsequently Punalur had also filed Title Suit No. 613 of 2021 in which also injunction application was filed. Both the matter went before the Hon'ble Division Bench in an appeal and while deciding appeal, the Hon'ble Division Bench has dealt with the agreement, Power-of-Attorney and the purported revocation of Power-of-Attorney and thereafter the matter went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court passed the following order:

*“The direction in the impugned order dated 05.04.2022 that the respondents would furnish security to the satisfaction of the trial court for Rs. 9,05,70,001.50/-, must be complied immediately and preferably within a period of two weeks from the day copy of this order is filed before the trial court. The security to be furnished to the satisfaction of the trial court should be a solvent security, which can be encashed and enforced in case of default.*

*Insofar as balance amount of Rs. 9,05,70,001.50/- is concerned, the said amount would not be withdrawn. This direction is subject to the decision in the suit.”*

- 23.** At the time of hearing injunction application, the learned Trial Court also directed Punalur to add KAHM as defendant No. 3 in Title Suit No. 613 of 2021 and also directed that the suit be heard analogously. KAHM had the knowledge that already in connection with the suit property three suits are pending before the learned 10<sup>th</sup> Bench, City Civil Court, Calcutta but in spite of having knowledge, the plaintiff has filed the present suit before this Court.
- 24.** Considering the pleadings of all cases, orders passed in injunction application by the Learned Trial Court, the Hon'ble Division Bench and

the Hon'ble Supreme Court, this Court finds that the subject-matter in all the cases are identical and the matter in issue are directly and substantially in issue. In all the cases, the subject-matter is the agreement, Power of Attorney and revocation of Power of Attorney. If this Court proceed with CS No. 149 of 2021 separately, there is every chance of contradictions in judgment.

- 25.** This Court is of the view that the petitioner in G.A 3 of 2022 has satisfied with the condition laid down in Section 10 of the Code of Civil Procedure, 1908, accordingly, **prayer (i) of G.A 3 of 2022 is allowed.** Consequently, **G.A 1 of 2021 is dismissed.**

**(Krishna Rao, J.)**