

(1963) 07 AHC CK 0011

Allahabad High Court

Case No: Ex. First Appeal No. 26 of 1961

Loon Karan Sethiya

APPELLANT

Vs

Ivan E. John and Others

RESPONDENT

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**Date of Decision:** July 10, 1963**Acts Referred:**

- Contract Act, 1872 - Section 202

**Citation:** AIR 1964 All 441**Hon'ble Judges:** S.S. Dhavan, J; K.B. Asthana, J**Bench:** Division Bench**Advocate:** A.K. Kirty, for the Appellant; Shanti Bhushan and S.D. Agarwala, for the Respondent**Final Decision:** Dismissed

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### Judgement

Dhavan, J.

This is a decree-holder's appeal from an order of the Second Additional Civil Judge, Agra, dismissing his application praying that the Court should not proceed with the execution of the decree at the instance of his agent who had applied for execution under a power of attorney executed by him. The case is somewhat peculiar and the facts are these. The appellant Loon Karan Sethiya is the decree-holder. He obtained a decree for about Rs. 15 lacs against Ivan E. John and certain other persons. But Sethiya was himself heavily indebted to the State Bank of Jaipur, Agra Branch (the principal respondent in this appeal), and the Bank pressed him to pay back the loan; As he was not in a position to do so he made an agreement with the Bank under which he executed a power of attorney in its favour authorising it to execute his decree against Ivan E. John and to credit the amount realised to his account. In plain words, the agreement was that the Bank instead of realising its debt from Sethiya was to realise it from his judgment-debtor by executing the decree obtained by him. The circumstances in which the power of attorney was executed have been described in detail in the preamble of this document. The power of attorney was

expressly made irrevocable and registered. In pursuance of their authority the Bank of Jaipur applied for execution of the decree. On 12-1-1960 Sethiya made the application which has given rise to this appeal. In it he alleged that the Bank, or rather its agent and employees, had colluded with the judgment-debtor and therefore he had cancelled the power of attorney in the Bank's favour. The application was not supported by any affidavit and no particulars of the alleged collusion were given. It was opposed by the Bank, inter alia, on two grounds-- first that it contained no particulars of the alleged collusion and secondly the power of attorney was irrevocable. Sethiya took time to supply, the particulars of collusion and obtained several adjournments for this purpose. But the particulars were never supplied and ultimately on 16-4-1960 the application was dismissed for non-compliance with the Court's order.

2. On 14-5-60 Sethiya moved his second application on the same ground as the first. He alleged that he had cancelled the power of attorney in favour of the Bank, because its agent and employees had colluded with the judgment-debtor. Again, no particulars of the alleged collusion were supplied. The Bank opposed this application on the same grounds as the first and in addition contended that after the dismissal of the previous application for non-compliance of the Court's order the applicant was disentitled to move another application on the same grounds but the learned Judge did not decide this objection as he preferred to dispose of the application on merits. He upheld the Bank's plea that the power of attorney was irrevocable and dismissed the application of Sethiya who has now come to this Court in appeal. We have heard Mr. A. K. Kirti for the appellant at some length but we are of the opinion that this appeal is entirely without substance. Learned counsel contended that the power of attorney in favour of the respondent, Bank was revocable because a principal has always the power to revoke the authority of his agent unless the agency is coupled with an interest. Counsel contended that in this case the agent had no interest in the subject-matter of the agency. We do not agree. We have examined the power of attorney. The preamble explains the circumstance which induced Sethiya to execute and the Bank to accept the power of attorney in their favour. It states that Sethiya was heavily indebted to the Bank, that the major part of his liability was unsecured, that the Bank was pressing hard for its money, and he had agreed to appoint the Bank as his attorney to execute the decree and credit the realisations to his account, it is therefore obvious that the Bank had an interest in the agency which was created in its favour because its main object was to enable them to realise their debt by this means instead of filing a suit against Sethiya. If Sethiya had not executed this power of attorney he would have been sued by the Bank for the recovery of the loan admittedly due from him. The present case is similar to the one contemplated in illustration A of Section 202 of the Contract Act which provides in effect that an agency in which the agent has an interest in the property which is the subject-matter of the agency, cannot, in the absence of an agreement, be terminated to the prejudice, of the agent's interest. In our opinion, if

a Bank's debtor makes an agreement under which it executes a power of attorney authorising the Bank to execute a decree already obtained by the debtor against a third person and credit the realisations to the debtor's loan account, the agency is irrevocable u/s 202. The decree in favour of the debtor is property within the meaning of that section and the Bank has an interest in it because the agency authorises it to execute the decree and appropriate the decretal amount in satisfaction of its loan. Therefore Sethiya could not have revoked the power of attorney in this case. Moreover, he agreed that it was irrevocable and he cannot be permitted to break his own agreement after having derived benefit under it. He tried to wriggle out of it by alleging that the Bank's servants had colluded with the judgment-debtor but there is not a particle of evidence in support of this allegation which is obviously false.

3. Mr. Kirti then tried to argue that the entire execution proceedings are ultra vires but we cannot allow him to argue an entirely new point. Sethiya's application was founded on specific grounds which have been rejected by the court below and he cannot be permitted to travel outside them in this appeal.

The appeal is dismissed with costs.