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PURPOSE ROLE AND APPOINTMENT OF A RECEIVER

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ABSTRACT

In a number of cases, the “court” may decide on his own discretion for the appointment of a receiver. When there is a disagreement inside or between some parties, for instance, an appointment may be established to protect the assets while the issues are resolved. A receiver is appointed so that the value of the assets can be preserved while still being realised for the benefit of all parties to the dispute. A receiver may be appointed by a court if property subject to a charge is transferred without the charge holder's consent or in connection with a proceeds of courts order. Debenture holders or creditors means both the parties with a suit can ask the court to appoint a receiver to recover any outstanding debts.

INTRODUCTION

Definition of Receiver was given in the case of “**T. Krishnaswamy Chetty vs. C. Thangavelu Chetty & Ors. (AIR 1955 Mad 430)**”, receiver is defined as “a person who is not a party to the cause, appointed by the Court to collect and protect the property or fund in litigation. “pendente lite”², when it does not seem reasonable to the Court that either party should hold it.” This definition is not found in the Code of Civil Procedure. Neither the plaintiff nor the defendant may claim that he is acting in their best interests, because he is a court officer and must operate in the best interests of all parties. If money or property is in the receiver's care, it is legally considered to be in the custody of the court because the receiver is a court employee. “custodia legis,”³ for the advantage of whoever claims to own the property in the future. The receiver's authority is limited to that specified in the order appointing him and that which is consistent with the practices of courts of equity.

When the court determines that it is not fair for either party to have control over the assets or

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²Concise Oxford English Dictionary (2002), p 1195.

³ A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856. on this subject, see 2 Madd. Ch. 233.

funds in question, it may appoint a third party, known as a receiver, to acquire and protect the assets or funds in question throughout the pendency of the case.

CHAPTER-I

WHO CAN APPOINT A RECEIVER?

Under section 51(d) of the Code of Civil Procedure, the court presiding over the pending proceedings has the jurisdiction to appoint a receiver if the court determines that doing so is just and expedient. The receiver is appointed by the court. As an example, the trial court can appoint a receiver in a litigation. Assuming an appeal is filed, however, the higher court can choose to appoint a receiver.

This discretion, however, is not unchecked, arbitrary, or absolute. As used above, "reasonable and convenient" does not suggest that the judge is making the appointment based on his or her personal preferences, which would be in violation of equity.

PURPOSE AND OBJECTIVE OF A RECEIVER:

Appointing a receiver is done with the primary goal of keeping the assets safe and sound while the case is pending. According to a court ruling in "**P. Lakshmi Reddy v. L. Lakshmi Reddy (AIR 1957 SC 314)**"⁴, a receiver is appointed so that the suit property may be preserved and the interests of both parties can be protected. When a judge rules that a piece of land or property is in litigation shouldn't belong to either side until the case is resolved, a "receiver" is appointed to hold onto the asset in question. The court will grant the applicant and their case some kind of protection until the matter is decided.

ROLE OF A RECEIVER

The Receiver acts as the court's "arm and hand," so to speak. He is given control over the money or property in dispute until a decree is issued, the parties reach an agreement, or such other time as the court determines is appropriate. Custodia legis⁵ refers to the legal status of the property or funds in the receiver's care. The Receiver has no authority outside of what was granted to him by the court when he was appointed.

⁴Supreme Court of India P. Lakshmi Reddy vs L. Lakshmi Reddy on 5 December, 1956 Equivalent citations: 1957 AIR 314, 1957 SCR 195 Author: B Jagannadhadas Bench: Jagannadhadas, B.

CHAPTER- II

ORDER 40 OF CODE OF CIVIL PROCEDURE, 1908⁶

Rule 1 It stipulates that if the court deems it necessary or appropriate, it can appoint a receiver to manage any property. The case was “**S.B. Industries, Freegunj and Others v. United Bank of India and Others (AIR 1978 All 189)**⁷”. It was decided that the term "may" in Order 40 clearly establishes the courts' discretionary authority. A court will exercise great caution and forethought when deciding to appoint a receiver because this decision is discretionary and not a matter of right.

The court upheld the following principles in the context of appointing a receiver in this case “**T. Krishnaswamy Chetty vs C. Thangavelu Chetty And Ors. (AIR 1955 Mad 430)**” following principles were held the court in context of appointment of receiver:

- I. To achieve justice and protect the interests of all parties having a stake in the result of a dispute or subject at hand when other available remedies would be inadequate, courts have the authority to exercise judicial discretion.
- II. The appointment of a “receiver” should be approved by the “court” only if the plaintiff can show that the plaintiff would have a strong likelihood (*prima facie*) of winning his suit
- III. on the basis of the evidence presented thus far.

ORDER 40, RULE 1

The receiver mentioned in Rule 1 might be appointed by the court before or after a decree has been issued, depending on when the court deems it just and convenient.

REMUNERATION TO THE RECEIVER: ORDER 40 RULE 2⁸

The Court may, by general or particular order, set that amount that will be paid for remuneration or as compensation for the receiver's services.

DUTIES OF A RECEIVER: ORDER 40 RULE 3

⁶(2022)[online] Available at: <<https://www.merriam-webster.com/dictionary/in%20custodia%20legis>> [Accessed 16 September 2022].

⁷Allahabad High Court S.B. Industries, Freegunj And ... vs United Bank Of India And Ors. on 30 August, 1977 Equivalent citations: AIR 1978 All 189 Author: K Agarwal Bench: M Shukla, K Agarwal

⁸2022. [online] Available at: <<https://www.merriam-webster.com/dictionary/in%20custodia%20legis>> [Accessed 16 September 2022].

He must file financial reports at such intervals and in such detail as the according to judicial order. If the court orders him to do so, he must pay the specified amount. Security, if any, shall be provided by him in an amount and form determined by the court appropriately account for the money he gets from the property. Moreover, he must pay for any damage to the property that he causes recklessness or carelessness on his part.

ENFORCEMENT OF DUTIES OF RECEIVER/ LIABILITIES OF RECEIVER: ORDER 40 RULE 4

In the event that the receiver fails to submit his accounts at such times and in such form as the Court directs, or if the receiver fails to pay the amount due from him as the Court directs, the Court may (on his own discretion) order to the receiver's property for to be "attached" and "sold", and may also apply for the proceeds which makes a good of any amount which would found to be due from him or if any loss which is occasioned by him, and then he shall have pay the balance (if any) to the receiver.

ORDER 40 RULE 5

Provided the government receives revenue and earnings from that some particular property, the court may own his own discretion appoints a collector as a receiver with his permission under (Order 40 rule 5), if the court determines that the collector's administration of the property is in the interest of some parties involved.

ROLE OF A RECEIVER⁹

The Receiver acts as the court's "arm and hand," so to speak. He is given control over the money or property in dispute until a decree is issued, the parties reach an agreement, or such other time as the court determines is appropriate. Custodia legis refers to the legal status of the property or funds in the receiver's care. The Receiver has no authority outside of what was granted to him by the court when he was appointed.

POWERS OF THE RECEIVER¹⁰

⁹ Aaptaxlaw.com. 2022. Order XL CPC | Rule 1, 2, 3, 4, 5 | Appointment of Receivers | Order 40 CPC 1908. [online] Available at: <<https://www.aaptaxlaw.com/code-of-civil-procedure/order-xl-code-of-civil-procedure-rule-1-2-3-4-5-appointment-of-receivers-order-40-of-cpc-1908-code-of-civil-procedure.html>> [Accessed 5 September 2022].

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A receiver is a judicial officer who acts at the command of the court. Depending on the circumstances, the “court” may give the “receiver” all or any of the following authority:

- The process of obtaining the property's rents and profits.
- Use and distribution of such income and rents.
- Signing of legal papers in one's own name.
- To file and contend with the legal action.
- Possessing whatever authority, the court deems necessary.

A receiver also has some indirect rights as the court's agent. For instance, if someone hinders or prevents the receiver from gaining custody of the property, that is obstruction in a judicial action, and the offender could be held in contempt of court. Similarly, property that has been turned over to the receiver cannot be taken without the court's permission. The receiver may not acquire full rights at the court's discretion. Even though the court has granted him complete authority over the property, he should nevertheless seek the court's advice before making any major changes.

The Receiver is not allowed to do the following without judicial approval:

- “Provide lease on the property.”
- “Bring suits except for suit for rent. A suit will be dismissed if not permitted by the court”.

PROCESS TO APPOINT A RECEIVER

The courts have procedures in place for appointing a receiver that can be found in the court regulations. The supreme court can establish guidelines for regulating lower courts under its jurisdiction.

The following procedure is outlined, for instance, in chapter XIX of the Delhi High Court regulations, 1967¹¹:

- A written request for appointment accompanied by an affidavit is required.
- Any person or entity other than the official receiver must provide collateral.
- This guarantee must be provided for the satisfaction of the registrar.

¹⁰University, W., 2022. Role and source of appointment of a receiver. [online] Eiza2.pressbooks.com. Available at: <<https://eiza2.pressbooks.com/chapter/role-and-source-of-appointment-of-a-receiver/>> [Accessed 5 September 2022].

¹¹Delhihighcourt.nic.in. 2022. [online] Available at: <[https://www.delhihighcourt.nic.in/library/acts_bills_rules_regulations/DELHI%20HIGH%20COURT%20\(origin al%20side\)%20rules,%201967.pdf](https://www.delhihighcourt.nic.in/library/acts_bills_rules_regulations/DELHI%20HIGH%20COURT%20(origin al%20side)%20rules,%201967.pdf)> [Accessed 7 September 2022].

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- The registrar will ask for surety bonds, and he must furnish them. The receiver's personal bond will equal two times the greater of the worth of the property as determined by the annual rental value or the full value of the property.
- The receiver is required to make a detailed report, including an inventory of the property and any relevant books of account, within one week of being appointed.
- The receiver will follow the registrar's instructions about the investment of the property's proceeds. Such funds are typically presented in the form of government bonds or scheduled banks.

CHAPTER-III

APPOINTMENT OF RECEIVER BY COURT UNDER STATUTES:-

Courts in India are given the authority to appoint receivers in a variety of situations by virtue of provisions such as Sections 20, 57, 59, and 68 of the Provincial Insolvency Act (5 of 1920), Section 16 of the Presidency Towns Insolvency Act (3 of 1909), Section 69-A of the Transfer of Property Act (4 of 1882), Sections 12 through 19 of the Trustees' and Mortgagees' Powers Act (28 of 1866), and Sections 118.

LANDMARK JUDGEMENTS

S.Saleema V. Pyari Begum, AIR 2000, (SC)

As stated by the Hon'ble Court in Case of "S. Saleema Bi vs. S. Pyari Begum and others, 2000 (SC) 1 (D.B.)12", the Receiver can only be appointed when it is just and convenient, as well as when there is a *prima facie* case in favour of the plaintiff and the case calls for taking an urgent measure such as appointment of a Receiver.

M/S. Sherli Khan Mohammad Manekia V. State Of Maharashtra, 2015, (Sc)

In M/s. Sherli Khan Mohammad Manekia Vs. State of Maharashtra and others, [2015 \(3\) SC 722 \(D.B.\)13](#), It was decided that the functions of the receiver normally stop with the final conclusion of the case. Even after that, the Court has the option of retaining the Receiver's services.

One of the toughest remedies is the appointment of a receiver. It will be made only when there is a clear risk of waste, damage, or alienation to a property. (Ram Kishore V. Balaram, AIR

¹²Supreme Court of India S. Saleema Bi vs S. Pyari Begum AndAnr. on 13 March, 2000Equivalent citations: 2000 (3) ALT 1 SC, JT 2000 (7) SC 329, (2000) 9 SCC 560Author: V KhareBench: V Khare, N S Hegde

¹³Supreme Court of India M/S Sherli Khan Mohamed Manekia vs State Of Maharashtra &Ors on 27 February, 2015Author: M EqbalBench: M.Y. Eqbal, Kurian Joseph

1978 pat 210]¹⁴. Before passing The court must specify the circumstances that led to the appointment of a receiver in its order. A plaintiff seeking receivership must demonstrate that he has a solid case and good title to the property, [SB Industries V United Bank, AIR 1978 All 18915 (The plaintiff must demonstrate a reasonable likelihood of ultimately achieving the outcome sought in the complaint); Ram kishore V. Balarm, AIR 1978 has a special equity in his favour. [Srinivas Babura Air, 1970] ... the defendant's property is in danger of being destroyed.

CHAPTER-IV

CONCLUSION

In Parmanand Patel (Dead) by LR. and another Vs. Sudha A. Chowgule and others¹⁶, 2009 (5) SCJ 550 (D.B.), The Supreme Court has declared that it is only necessary to appoint a Receiver if doing so is fair and practical. It is well-established precedent that a Receiver cannot be appointed in the case of agricultural lands in the event of a dispute between relatives.

As a result, the receiver's duty is vital whenever the court orders the receiver to take charge of the subject matter during a litigation in order to protect and maintain it until the time the court makes a ruling on the case. Everything under the receiver's care is legally vested in the court system because he is a court official. If the court determines that neither party is suitable to oversee the property until the dispute is resolved, a receiver will be appointed. Assuming they meet the court's requirements, someone will be appointed receiver.¹⁷ The receiver is vested with certain obligations and powers by the court and must use them to the best of his ability in order to properly manage the property. The recipient should exercise caution before making any important calls related to the subject, as he will be personally liable for any damage that may result. Before making any such choices, he will seek the approval of the court.

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¹⁴Patna High Court Ram Kishore Das vs Balram Sah on 31 August, 1977Equivalent citations: AIR 1978 Pat 210, 1978 (26) BLJR 800Author: F SahayBench: N P Singh, P Sahay

¹⁵Allahabad High Court S.B. Industries, Freegunj And ... vs United Bank Of India And Ors. on 30 August, 1977Equivalent citations: AIR 1978 All 189Author: K AgarwalBench: M Shukla, K Agarwal

¹⁶Supreme Court of India Parmanand Patel (D) Th. Lrs. &Anr vs Sudha A. Chowgule&Ors on 6 March, 2009Author: S SinhaBench: S.B. Sinha, Cyriac Joseph

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