

APPOINTMENT OF RECEIVER

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Introduction

The court may appoint a receiver in a variety of circumstances. An appointment may be made to, for example, preserve assets where there is a dispute within a partnership or a company pending a decision on the matters of dispute. This appointment is intended to maintain the value of the assets so that they may be realised for the benefits of all parties to the dispute.

The court may appoint a receiver where assets subject to a charge have been transferred without the consent of the charge-holder or to in regard to a proceeds of crime order. The court may appoint a receiver on behalf of a debenture holder or judgment creditor to enforce payment.

The court's power to appoint a receiver

It is provided under Order XL in Code of Civil Procedure, 1908. contains 5 rules, and also provided in section 94 supplemental proceedings – in order to prevent the ends of justice from being defeated the court may, if it is so prescribed - (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property.

"A receiver", in the language of High, "is an indifferent (American expression for impartial) person between the parties to a cause, appointed by the Court to receive and preserve the property or fund in litigation 'pendente lite', when it does not seem reasonable to the Court that either party should hold it. He is not the agent or representative of either party to the action, but is uniformly regarded as an officer of the Court, exercising his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in interest. Being an officer of the Court, the fund or property entrusted to his care is regarded as being in 'custodia legis', for the benefit of who-ever may finally establish title thereto, the Court itself having the care of the property by its receiver, who is merely its creature or officer, having no powers other than these conferred upon him by the order of his appointment, or such as are derived from the established practice of Courts of equity.

"A receiver" is frequently spoken of as the "hand of the Court", and the expression very aptly designates his functions, as well as the relation which he sustains to the Court." (J. L. High. A Treatise on the Law of Receivers, Third Edition (1894), Callaghan & Co., Chicago page 2).

A Receiver has been defined by Kerr as follows : "A receiver in an action is an impartial person appointed by the Court to collect and receive, pending the proceedings, the rents, issues and profits of land, or personal estate.

Two classes of receivers can be appointed by Courts, viz., (a) under the statutes and (b) under the Civil Procedure Code, the Specific Relief Act and the Original Side Rules of the High Court. (a) Several statutes in India like the Provincial Insolvency Act (5 of 1920) (Sections 20, 57, 59 and 68), the Presidency Towns Insolvency Act (3 of 1909) (Section 16) the Transfer of Property Act (4 of 1882) (Section 69-A), the Trustees' and Mortgagees' Powers Act (28 of 1866) (Sections 12 to 19) and the Indian Companies Act (7 of 1913) (Sections 118, 119, 129 and 277E) authorise Courts for appointing receivers under the particular circumstances set out therein.

The second class of Receivers are included in these in which appointment is made to preserve the property pending litigation to decide the rights of parties. The powers to appoint a Receiver in such cases are comprised in the Civil Procedure Code of 1908 (Sections 51, 94 and Order 40), the Specific Relief Act of 1877 (Section 44), and the Original Side Rules of High Courts relating to Receivers.

"the appointment is made to preserve property pending litigation to decide the rights of the parties, or to prevent a scramble among these entitled, as where a receiver is appointed pending a grant of probate or administration, or to preserve property of persons under disability, or where there is danger of the property being damaged or dissipated by these with the legal title, such as executors or trustees, or tenants for life, or by persons with a partial interest, such as partners, or by the persons in control, as where directors of a company with equal powers are at variance." In all these cases, it is necessary to allege and prove some peril to the property; the appointment then rests on the sound discretion of the Court.

"In exercising its discretion the Court proceeds with caution, and is governed by a view of all the circumstances. No positive or unvarying rule can be laid down as to whether the Court will or will not interfere by this kind of interim protection of the property. Where, indeed, the property is as it were 'in medio', in the enjoyment of no one, it is the common interest of all parties that the Court should prevent a scramble, and a receiver will readily be appointed: as, for instance, over the property of a deceased person pending a litigation as to the right to probate or administration. But where the object of the plaintiff is to assert a right to property of which the defendant is in enjoyment, the case presents more difficulty; The Court by taking possession at the instance of the plaintiff may be doing a wrong to the defendant; in some cases an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant, the Court may by its interim interference have caused mischief to the defendant for which the subsequent restoration of the property may afford no adequate compensation. (See -- 'Marshall v. Charteris', 1920-1 Ch 520 (I)). Where the evidence on which the Court is to act is very clear in favour of the plaintiff, then the risk of eventual injury to the defendant is very small, and the Court does not hesitate to interfere. Where there is more of doubt, there is, of course, more of difficulty. The question is one of degree, as to which, therefore, it is impossible to lay down any precise or unvarying rule. (-- 'Owen v. Roman', (1853) 4 HLC 997 at p. 1032 (J), per Lord Cranworth,) If the Court is satisfied upon the materials it has before it that the party who makes the application has established a good prima facie title, and that the property the subject-matter of the proceedings will be in danger if left the trial in the possession or under the control (-- 'Cummins v. Perkins', (1899) 1 Ch 16 (K); -- 'Leney & Sons, Ltd. v. Callingham', (1908) 1 KB 79 (L) of the party against whom the receiver is asked for (-- 'Evans v. Coventry', (1854) 5 Do G M & G 911 at p. 918 (M)) or, at least, that there is reason to apprehend that the party who makes the application will be in a worse situation if the appointment of a receiver be T. Krishnaswamy Chetty vs C. Thangavelu Chetty And Ors. on 6 December, 1954 Indian Kanoon - <http://indiankanoon.org/doc/1131519/> 4 delayed (-- 'Aberdeen v. Chitty', (1838) 3 Y & C 379 at p. 382 (N); -- 'Thomas v. Davies', (1847) 11 Beav 29 (O)), the appointment of a receiver is almost a matter of course (See -- "Middleton v. Dodswell", (1800) 13 Ves Jun 260 (P); -- 'Oldfield v. Cobbett', (1835) 4 LJ Ch 271 (Q); --'Heal and Personal Advance Co. v.

Macarthy, (1879) 27 WR 706 (R)). If there is no danger to the property, and no fact is in evidence to show the necessity or expediency of appointing a receiver, a receiver will not be appointed, unless there be some other urgent reason for making the appointment ('Whitworth v. Whyddon', (1850) 2 Mac & G 52 (S);

In regard to American Courts, High sets out these principles in Chap. 1 on the Law of Receivers, Third Edition, 1894 at p. 13 as follows; "The principal grounds upon which Courts of equity grant their extraordinary aid by the appointment of receivers 'pendente lite*' are that the person seeking the relief has shown at least a probable interest in the property, and that there is danger of its being lost unless a receiver is allowed, the element of danger being an important consideration in the case. And a remote or past danger will not suffice as a ground for the relief, but there must be a well-grounded apprehension of immediate injury. The power of appointment is usually invoked either for the prevention of fraud, to save the subject of litigation from material injury, or to rescue it from threatened destruction. And to warrant the interposition of a Court of equity by the aid of a receiver, it is essential that plaintiff should show, first, either a clear legal right in himself to the property in controversy, or that he has some lien upon it, or that it constitutes a special fund out of which he is entitled to satisfaction of his demand. And, secondly, it must appear that possession of the property was obtained by defendant through fraud; or that the property itself, or the income from it, is in danger of loss from the neglect, waste, misconduct or insolvency of the defendant. Not only must the plaintiff show a case of adverse T. Krishnaswamy Chetty vs C. Thangavelu Chetty And Ors. on 6 December, 1954 Indian Kanon - <http://indiankanon.org/doc/1131519/> 5 and conflicting claims to the property, but he must also show some emergency or danger of loss demanding immediate action, and that his own right is reasonably clear and free from doubt. If the dispute is as to title only, the Court very reluctantly disturbs possession by a receiver, but if the property is exposed to danger and to loss, and the person in possession has not a clear legal right thereto, the Court will interpose by a receiver for the security of the property."

The five principles which can be described as the "panch sadachar" of our Courts exercising equity jurisdiction in appointing receivers are as follows :

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised-for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding : -- 'Mathusri v. Mathusri, 19 Mad 120 (PC) (Z5); -- 'Sivagnanathammal v. Arunachallam Pillai', 21 Mad LJ 821 (Z6); --'Habibullah v. Abtiakallah', AIR 1918 Cal 882 (27); -- 'Tirath Singh v. Shromani Gurudwara Prabandhak Committee', AIR 1931 Lah 688 (28); --'Ghanasham v. Moraba', 18 Bom 474 (7.9); --'Jagat Tarini Dasi v. Nabagopal Chaki', 34 Cal 305 (Z10); -- 'Sivaji Raja Sahib v. Aiswariyanandaji', AIR 1915 Mad 926 (Z11); -- 'Prasanno Moyi Devi v. Beni Madbab Rai', 5 All 556 (Z12); -- 'Sidheswari Dabi v. Abhayeswari Dahi', 15 Cal 818 (213); T. Krishnaswamy Chetty vs C. Thangavelu Chetty And Ors. on 6 December, 1954 Indian Kanoon - <http://indiankanoon.org/doc/1131519/> 6 -- 'Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das', AIR 1925 Lah 349 (Z14); -- 'Bhupendra Nath v. Manohar Mukerjee', AIR 1024 Cal 456 (Z15).

(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie he has very excellent chance of succeeding in the suit. -- 'Dhumi v. Nawab Sajjad All Khan', AIR 192.3 Uh 623 (Z16); -- 'Firm of Raghubir Singh' Jaswant v. Narinjan Singh', AIR 1923 Lah 48 (217); -- 'Siaram Das v. Mohabir Das', 27 Cal 279 (Z18); -- 'Mahammad Kasim v. Nagaraja Moopnar', AIR 1928-Mad 813 (Z19); -- 'Banwarilal Chowdhury v. Motilal', AIR 1922 Pat 493 (220).

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. -- "Manghanmal Tarachand v. .Mikanbai", AIR 1933 Sind 231 (221); --

'Bidurramji v. Keshoramji', AIR 1939 Oudh 31 (Z22); -- 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328 (223).

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver. -- 'Nilambar Das v. Mabal Behari', AIR 1927 Pat 220 (Z24); -- 'Alkama Bibi v. Syed Istak Hussain', AIR 1925 Cal 970 (Z25~.); -- 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252 (Z26); -- 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He T. Krishnaswamy Chetty vs C. Thangavelu Chetty And Ors. on 6 December, 1954 Indian Kanoon - <http://indiankanoon.org/doc/1131519/> 7 must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc.

To sum up as stated in -- 'Crawford V. Ross', 39 Ga 44 (Z28), "The high prerogative act of taking property out of the hands of one and putting it in pound under the order of the Judge ought not to be taken except to prevent manifest wrong imminently impending."

Application for the appointment of a receiver

An application for the appointment of a receiver may be made without notice and must be supported by written evidence. The written evidence, according to the Civil Procedure Rules Practice Direction 69 must include:

- the reasons why the appointment is required;
- the value of the property and the income, if any, it is likely to produce;
- whether the receiver will act without giving security; and
- details of the person to be appointed receiver, if any.

Where the application is disputed the court will make a decision based on the “balance of convenience” test. This involves assessing the damage to each of the interested parties if a receiver was appointed. In practice the court will examine the strength of the applicant’s case and appoint a receiver where the property is thought to be in jeopardy. The appointment should preserve the assets pending a decision by the court on the matters under dispute, the validity of the asset transfer or the repayment of the judgment debt.

The court decides who will be appointed receiver after taking into account the views of all interested parties. The receiver is usually independent of the interested parties although it is possible to appoint a person with an interest in the subject matter of the claim . Where an interested party is appointed receiver he/she usually agrees to act without salary.

Appointment of a receiver where the company is in compulsory liquidation

The court may appoint the official receiver to be receiver on behalf of a debenture holder or other creditor where the company is already in compulsory liquidation.

Personal liability of the receiver and adequate security

A court appointed receiver is personally liable for his/her acts and omissions and, as a result, may be required by the court to provide adequate security. Where the receiver is an insolvency practitioner security may be provided by way of his/her bond. In all other cases it should be provided by way of a guarantee. The order appointing the receiver will usually include the date by which the receiver must give security or satisfy the court that security is already in force. An insolvency practitioner receiver should file written

evidence of the bond and the adequacy of its cover in court. Security in the form of a guarantee should be prepared in a form, and entered into with a clearing bank or insurance company, approved by the court.

Failure to provide adequate security

Where the receiver fails to provide security or to satisfy the court as to the security he/she has in force by within the time allowed the court may end the receivership.

The receiver is an officer of the court

The receiver is an officer of the court in all cases. The receiver must act fairly and impartially. The appointment of a receiver operates as an injunction. Any interference with the receiver's duties amounts to a contempt of court.

The duties and powers of the receiver

The duty of a receiver appointed by the court is limited to collecting the property of which he/she is appointed receiver and paying all money received into court, or as the court may direct. The order appointing the receiver will detail his/her powers. Where the receiver is to continue trading he/she will be appointed receiver and manager. Where the receiver believes the powers are insufficient he/she will be expected to apply to court for an extension of his/her powers. The court may give additional directions to the receiver at any time after his/her appointment..

Discharge of the receiver

A court appointed receiver can only be discharged by order of the court upon the application of the receiver or any other party. This rule has been held to be permissive and a court may discharge the receiver before the completion of his/her duties for example where the appointment has become unnecessary. Where the receiver has completed his/her duties the receiver, or any other party, must apply for an order discharging the receiver and cancelling the security.

Conclusion:

The receiver can not be appointed as a general rule, utmost care to be taken while appointing receiver.