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For the Workshop-III,

APPOINTMENT OF RECEIVERS

1. In Legal terminology, a Receiver is a person, placed in the Custodian Responsibility for the property of others, including tangible and intangible assets and rights, especially, in cases where a company can not meet financial obligations or enters bankrupt.

2. A Receiver shall be appointed in a variety of circumstances and such an appointment shall be for the purpose of maintaining the value of the assets so that they may be realized for the benefit of all the parties to the dispute. In other words a Receiver is an independent person who is appointed by a Court to manage property or money during a lawsuit.

3. The Court by exercising its discretionary power shall appoint a Receiver and such appointment is for the more speedy getting in of the estate in dispute and scouring it for the benefit of such person as may be entitled to it and does not affect the right. The Receiver is an officer of the Court and as such responsible for good faith and responsible diligence.

4. The **Order-XL of the Code of Civil Procedure** deals with the **Appointment of Receiver**. The order speaks as follows:

1. Appointment of Receivers :-

(1) Where it appears to the Court to be just and convenient, the Court may by order :-

- a) appoint a Receiver of any property, whether before or after decree ;
- b) remove any person from the possession or custody of the property ;
- c) commit the same to the possession, custody or management of the Receiver; and
- d) confer upon the Receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself

has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property, any person whom any party to the suit has not a present right so to remove.

5. The **Section 69-A of the Transfer of Property Act**, also deals with the **Appointment of Receiver**. The section speaks as follows:

- 1) A mortgagee having the right to exercise a power of sale under Section 69 shall, subject to the provisions of sub-section (2), be entitled to appoint, by writing signed by him or on his behalf, a Receiver of the income of the mortgaged property or any part thereof.
- 2) Any person who has been named in the mortgage deed and is willing and able to act as Receiver may be appointed by the mortgagee.

If no person who has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees; failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a Receiver, and any person appointed by the Court, shall be deemed to have been duly appointed by the mortgagee.

6. The remuneration of the Receiver shall be fixed by the Court by a general or Special Order, for the services rendered by him.

Duties of Receiver :

- 1) The Receiver shall furnish security, if the Court thinks fit, duly to account for what he shall receive in respect of the property ,
- 2) The Receiver shall submit his accounts at such periods and in such form, as per the directions of the Court ,
- 3) The Receiver shall pay the amount due from him as the Court directs.
- 4) The Receiver is responsible for any loss occasioned to the property by his willful default or gross negligence.

If the Receiver fails to discharge his duties, the Court may direct the property of the Receiver to be attached and may also sell such property and may apply the proceeds to make good any amount found to be due from the Receiver or any loss occasioned by the Receiver and shall pay the remaining balance, if any, to the Receiver.

7. In *Jagat Tarini Dasi Vs. Naba Gopal Chaki*, ILR 1913 (40) CAL 274 (P.C), the status of the Receiver was explained as

“The Receiver is appointed for the benefit of all concerned, he is the representative of the Court and of all parties interested in the litigation, wherein, he is appointed. He is the right arm of the Court, in exercising the jurisdiction invoked in such case, for administering the property; the Court may only administer through a Receiver. For this reason, all suits to collect or obtain possession of the property, must be prosecuted, by the Receiver and the proceeds received and controlled by him alone”.

8. In *Krishnaswamy Chetti Vs. C.Thangavelu Chetti*, AIR 1955 Madras 430, it was observed that a Receiver has been defined 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, which it does not seem reasonable to the Court, that either party should collect or receive or for enabling the same, to be distributed among the persons entitled”.

It is further observed that “the Appointment of the Receiver is made to preserve property, pending litigation, to decide the rights of the parties or to prevent scramble, among those 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 the Company with equal powers are at variance”.

In the above said judgment, the 5 principles described as 'Panch Sadachar', regarding to appointment of Receivers, by the Courts, are as follows:

- 1) The Appointment of the Receiver, pending a suit, is a matter resting in the discretion of the Court and the said discretion, is not arbitrary or absolute, but, it is a sound and judicial discretion.
- 2) The Court should not appoint a Receiver, except upon proof, by the Plaintiff, that prima-facie, he has a very excellent chance of succeeding in the suit.
- 3) The element of danger, or loss is an important consideration and the Court will not act on possible danger only, but the danger must

be great and imminent demanding immediate relief. The plaintiff must not only show a case of adverse and conflicting claims to property, but show some emergency and danger.

4) The Court, shall appoint a Receiver even if there is NO allegation of waste and mismanagement, but the fact that the property is more or less "In Medio" is sufficient, for such appointment.

5) The party, who intends for appointment of Receiver, must come to the Court, with clean hands and should not have dis-entitled himself to the equitable relief, by laches, delay, acquiescence.

9. The District Collector, may also be appointed as Receiver, where the property is land paying revenue, to the Government or land of which, the Revenue has been assigned or redeemed and Court considers that the interest of those concerned, will be promoted by the management of the Collector, the Court may with the consent of the Collector, appoint him, to be the Receiver of such property (Order-60, Rule-5).

Though the Court is having the discretion to appoint a Receiver , it is upon the Court and much care is to be taken with regard to each and every aspect of the dispute pending between the parties and the necessity of a Receiver before such an appointment.

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