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## Appointment of Receiver

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**Abstract**

A receiver is a court-appointed person who assists the court in civil cases. The Receiver is a court official who assists the court in protecting and preserving the subject matter of the lawsuit until the court makes a decision. The court may decide that appointing a receiver who will be accountable for the administration of the subject matter. In most cases, the subject matter is a moveable or immovable property.

The Receiver is responsible for the property in the same way as a wise individual is responsible for his own private property. If he does not obey the court's instructions, the court may seize his property in order to reclaim the money owed to him. This research paper discusses everything concerning the appointment of a Court Receiver in India.

## **Introduction**

The Receiver is a fair and neutral person designated by the court to aid and administer, that is, to safeguard and maintain a disputed property engaged in a litigation, pursuant to order 40 of the CPC.

In a disagreement between A and B over an immovable property, for example, if the court believes it is in the best interests of both parties to take ownership of the property from B and transfer it to an impartial party, the court may appoint a receiver to administer the property until the action is resolved. The court would appoint a receiver to look after the property's upkeep. He can collect any accumulated revenue, such as rent or other earnings, and use it towards property maintenance. The receiver will have to report the remaining revenue, if any, to the court after subtracting the maintenance expenditures from the income received from the property.

He is not a spokesperson of any party in the case and is commonly accepted as a court officer acting in the best interests of all parties, not just the plaintiff or defendant.

## **What is the purpose of the appointment of a receiver?**

When a party in ownership of disputed property discharges it or commits irreparable harm to it, the suit's entire purpose is lost since the subject matter vanishes or loses value. When the court determines that the property in question should not be distributed to either of the parties pendente lite, the court appoints a receiver to oversee the property's safeguarding. It

is a type of temporary relief granted by the court to the parties who file the application until the case is resolved by the court.

### **What is the role of a receiver?**

The Receiver is an officer of the court who acts as the court's extension. He is charged with the task of receiving disputed property or money from the court and managing it until a decree is issued, the parties have reached an agreement, or the court determines otherwise. The receiver's property or funds are regarded to be in custody of the law. The Receiver has no powers beyond those granted to him by the court when he was appointed.

### **Who can appoint a receiver?**

As per section 51(d) of the civil process law, the court in an ongoing litigation can appoint a receiver if it seems fair and expedient to the court. The court has the authority to appoint the receiver at its authority. The trial court, for example, can appoint a receiver in a lawsuit. On appeal, however, the appellate court has the power to appoint a receiver.

The discretion is not, however, unlimited, arbitrary, or unrestricted. The phrase fair and expedient does not imply that the appointment is made based on the judge's inclinations and preferences on any reasons that are unjust.

### **How does the court decide whether to appoint a receiver or not?**

Court has to keep the following principles in mind before appointing a receiver:

1. Appointment of a receiver is a discretionary power.
2. It is a protective relief to the plaintiff. The object is to protect and preserve the disputed property till the time the suit is pending in the court.
3. A receiver should not be appointed unless the plaintiff shows prima facie that he has a strong case against the defendant and it is more than likely that he will succeed in the suit.

4. Appointment of a receiver is one of the hardest remedies as it deprives the defendant of his right to possession before the final decree. Therefore, the court should not resort to it merely on the ground that it will do no harm. There should be strong apprehension that there is a danger to the property or the plaintiff will be in worse of a situation if the appointment of a receiver is delayed.
5. The court should appoint a receiver only when there is a possibility of wrong or injury. Also, if it is shown that the subject matter is not in the possession of any of the parties and it is in the common interest of both the parties to appoint a receiver for the protection and preservation of the property.
6. The court should look at the conduct of the party who makes the application for appointment of a receiver. The party should come to the court with clean hands and their conduct should be such that they are not disentitled to this equitable relief.

The above principles were introduced by the Madras Court in the case of *T. Krishnaswamy Chetty vs C. Thangavelu Chetty And Ors.*, AIR 1955 Mad 430. These principles are now well established in the Indian jurisprudence.

### **Who can apply for the appointment of the receiver?**

In most cases, a plaintiff submits an appeal for the appointment of a receiver, although defendants can also do so. A third person is not permitted to submit the request, but if he is concerned about the property's protection and preservation, he may do so with the court's approval.

### **Who can be appointed as a receiver?**

A receiver should be chosen who is independent, unbiased, and completely uninterested. Such a person should have no vested interest in the contested property. In most cases, the court does not appoint a receiver to the case. However, under unusual situations, a party to the lawsuit might be designated as receiver.

### **When can a receiver be appointed?**

When the court believes that neither party should be in possession of the property in question, the court might appoint a receiver. Before or after a decree, the court can appoint a receiver and remove anybody from ownership or possession of the property, committing it to the receiver's custody or administration.

The receiver can be appointed under the CPC to prevent the objectives of justice from being thwarted [section 94(d)]. Similarly, the court has the authority to appoint a receiver to carry out a decree as per section 51(d).

Special statutes provide provisions enabling the court to appoint a receiver. The Companies Act of 2013, for example, allows for the appointment of a receiver under section 84. Similarly, section 69A of the 1882 Transfer of Property Act allows for the appointment of a receiver.

### **What is the process of appointment of a receiver?**

Court regulations govern the procedure of appointing a receiver. The supreme court has the authority to establish regulations for the supervision and directions of lower courts.

For instance,

In chapter XIX of the Delhi High Court (Original Side) rules, 1967, the following process is provided:

1. Application for appointment shall be made in writing and shall be supported by affidavit.
2. Receiver other than the official receiver has to give security.
3. The security is to be given to the satisfaction of the registrar.
4. He has to provide personal bonds with the number of surety required by the registrar. The personal bond will be double the amount of annual rental value of the property or the total value of the property which the receiver is going to administer.
5. Within a week of appointment, the receiver will have to submit a report providing the details regarding the property such as inventory of property or books of account etc.

6. The registrar will give directions on where to invest the money received by the receiver from the property. Generally, such money is submitted in scheduled banks or government bonds.

### What are the powers of the receiver?

Under order 40 rule 1(d) powers of the receiver are provided as following:

1. Collection of rents and profits arising out of the property.
2. Application and disposal of such rents and profits.
3. Execution of documents as the owner himself.
4. To institute and defend the suit.
5. Such powers as the court may deem fit.

There are several other secondary powers that a receiver possesses as the court's hand. For example, obstructing or interfering with the receiver's right to possession will be considered obstruction in a court process, and the offender may be held in contempt of court. Similarly, property in the receiver's possession cannot be attached without the court's permission..

The court has the authority to deny the receiver all of his or her rights. Even though the court has granted him complete authority, he should follow the court's instructions in all major property decisions to protect himself.

Without the permission of the court, the receiver cannot:

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

### **What are the duties of the receiver?**

Under order 40 rule (3), duties of a receiver are provided as follows:

1. Furnish security to account for what he will receive from the property as income.
2. Submit accounts (half yearly) for such period or form as directed by the court.  
The account basically includes the income received and expenses incurred for the protection and preservation of the property.
3. Pay the amount due to the court.
4. Take responsibility for any reduction in the value of the property because of the receiver's wilful negligence.
5. Discharge the duties personally and should not delegate or assign any of the rights entrusted to him by the court.

The court has assigned the receiver with all of the tasks and obligations. Otherwise, the court might hold him solely accountable for any loss that occurs as a result of his carelessness or wilful failure to safeguard and maintain the property.

### **What are the liabilities of a receiver?**

According to Order 40 rule (4), When a receiver fails:

1. To submit the reports as specified by the court or,
2. To pay the amount due from him as directed by the court or,
3. Causes loss to the property due to gross negligence.
4. Any other duty which court directed him to do,

The receiver's property may be attached by the court to recoup the damage caused by his deliberate default or carelessness.

The residual amount (if any) will be paid to the receiver when the court has recovered all losses from the revenues earned after selling the receiver's property.



The receiver is obligated to keep costs low and take care of the property entrusted to him in the same way that a sensible person would in comparable circumstances with his own property.

#### **Will a receiver be entitled to remuneration?**

Receivers are entitled to payment for the services they provide, as determined by the court. A receiver must also be compensated for any losses or expenditures spent in preserving the property.

Under order 40 rule (2), the court can fix the remuneration to be paid to the receiver for the services provided by him. The court can pass a general or specific order regarding the same.

For example, The Delhi high court has provided in Delhi High Court (original side) rules, 1967, the for remuneration of the receiver as follows:

Rents recovered, outstanding recovered, the value realised on the sale of movable and immovable properties calculated on anyone estate:

- (i) On First Rs. 10,000 : **5 %**
- (ii) Above Rs. 10,000 up to Rs. 20,000 : **3 %**
- (iii) Above Rs. 20,000 up to Rs. 50,000 : **2 %**
- (iv) Above Rs. 50,000 up to Rs. 1,00,000 : **1 %**

(v) Above Rs. 1,00,000 :  $\frac{1}{2}$  %

Similarly, for taking custody of money, **1 %**, for taking custody of Government securities of stocks, shares, **1 %** of the estimated value.

If no remuneration is specified for any work, such remuneration can be granted, as the court may think reasonable, on the application of the receiver.

#### **Can a collector be appointed as a receiver?**

Yes, according to (Order 40 rule 5), a collector can be appointed as a receiver if the revenue generated from the property is received by the government, the court can appoint a collector as a receiver with his consent if the court thinks that management of such property by collector will promote the interests of those who are concerned.

## Conclusion

Clearly, when the court orders the receiver to administer the subject matter of a claim in order to protect and maintain it until the court rules on the case, the receiver performs an essential function. The receiver is a court officer, and the property he manages is regarded to be in the possession of the law. When the court determines that neither party should administer the property while the case is resolved, the court appoints a receiver. Anyone can become a receiver as long as they meet the court's standards. A receiver should be a person of impartiality, independence, and indifference who has no vested interest in the subject matter and can handle the property as a sensible man would manage his own. The receiver has been given specific rights and obligations by the court, which he should utilise to effectively manage the property. Because he is personally accountable for any harm to the subject matter, the receiver should exercise caution while making crucial decisions relating to it. To be safe, he can obtain the court's approval before making such judgments.

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