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Research Article

Receiver under the Code of Civil Procedure and Specific Relief Act in Bangladesh: A Critique

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ABSTRACT

This study attempts to investigate and discuss our understanding of the prevalence and determinants of a Receiver both under the Civil Procedure Code and Specific Relief Act with an early reflection on the nature and part of a Receiver under our Court Framework, the interrelationship between the obligations and liabilities of the sources in common, encourage issues secured and incorporate the common arrangements concerning Receiver within the courts nowadays. Attention is given to the definition of the category 'Receiver', which endeavors to administer the widespread structure of Receiver in South East Asia because It is particularly pertinent for studies interested in the comparative civil lawful theory; the convergences of the law practices; and the part of the law in determining or transforming the Receiver. The mode and effect of his appointment, and his rights, powers duties, and liabilities are regulated by the Code of Civil Procedure and Specific Relief Act.

Keywords: Receiver, obligation of a receiver, liability of a receiver, method of appointment.

Introduction

The power of appointing a receiver which is the subject matter of the litigation is long possessed and constantly exercises the English court of equity. The Receiver is treated to be an officer of the court who makes a difference in the court to ensure and protect the subject matter of suit till the time the court decides the matter. Now and then, the court considers, it is within the best interest of both the parties to appoint a receiver who will be dependable for the administration of the subject matter. The subject matter is for the most part a mobile or undaunted property. The Receiver is obligated to require care of the property ~~for~~ as a judicious man will ~~wathout~~ for his claim of an individual property. He ought to take after the headings of the court or else his property can be connected by the court to recuperate the sum which is due to him.

Methodology

The research is qualitative in nature and the methodology of the study is exploratory based on primary and secondary data and document analysis. Besides some cases are studied to find out the present position of

Receiver under the Code of Civil Procedure and Law of Specific Relief. The method refers to the range of techniques that are used in legal research. Additionally, the thesis adopts a comparative method and the scope of this research encompasses qualitative research with a comparative nature. The interpretative study of the receiver is central. The research is based on analyzing the provisions and implications of the principles of a receiver under the specific Relief Act and Civil Procedure Code, of 1908. And assessing the suitability of the application of Receiver in the court system of Bangladesh. Moreover, it also looks to other sources of optional or secondary sources. Such as books, journals, and common construction of rules in court.

Objectives of the study

Against the background of the set articulation, the main objectives of the research paper are as follows:

- i. To find out how the courses of action and standards of the Receiver are connected.
- ii. To analyze and compare the different provisions relating to the receiver
- iii. To see and distinguish the unwavering quality and the changeability of the performance of the receiver
- iv. To mean the result of expansion and deliberate Justification of the Receiver.
- v. To become mindful of the part application of different applications of Receiver.

Definition of Receiver

The term “receiver” is not defined in the Code of Civil Procedure. Simply, a receiver receives money from another and renders an account.¹ According to Kerr, he is “an impartial person appointed by the court to collect and receive, pending the proceedings, the rent, issues, and profits of land, or personal estate, which it does not seem reasonable to the court either party should collect or receive, or for enabling the same to be distributed among the persons entitled. A receiver may be defined as a neutral person between the parties appointed by the court to receive rent, issues, and profits of lands or another thing in question pending the suit. A receiver is appointed when it does not seem reasonable to the court that either party should do it, or when a party is incompetent to do so, as in the case of an infant. The receiver is appointed on behalf of all parties and not of the plaintiff or a defendant only. The rights of the parties are not affected by his appointment for he is an officer of the court holding the property for the party who may ultimately prove to be entitled to it.

The object of appointment of Receiver

The primary object of the appointment of the receiver is to protect, preserve, and manage the property during the pendency of the litigation. A receiver is an officer and is an extended arm and hand of the court, a part of the court a machinery by which the rights of the parties are protected. The purpose of the appointment of a receiver is to preserve the suit property and safeguard the interests of both the parties to the suit.

Principles relating to the appointment of Receiver

Appointment of the receiver is a matter resting in the discretion of the court as is expressed in the words employed in Order 40, rule I of CPC, discussed. The court has to exercise the discretion in a sound and judicious manner taking into consideration the entire circumstances of each case. Simply because a plaintiff makes violent and wholesale charges of waste and mal administration against a defendant in possession of property as executor under a will, or as a tenant-for-life, and upon these allegations applies for appointment of a receiver, it is not a necessary consequence that such appointment should be made.² The object and purpose of the appointment of

Receiver are the preservation of the subject matter of litigation pending judicial determination of dispute between the parties thereto. To achieve these objective and purpose, the court is guided by the following principles:

- (i) In case involving title to real property, the court seems generally unwilling to disturb the possession of one party by appointing a Receiver, unless a strong case of fraud or danger of loss is made out.
- (ii) Where the property is not in possession either of the plaintiff or of the defendant, the court will appoint a receiver instantly as it would be in the common interest of both parties to place the property in the possession of the court to prevent a scramble³ such as over the property of a deceased person pending litigation as to the right to probate or administration.
- (iii) Where the property has a third party, the court may appoint a Receiver, if any party to the suit has a present right to remove him.⁴But before removing the person who is not a party to the suit, the court should inquire into his claim to the property.
- (iv) The court will not appoint a Receiver at the instance of a person whose right is disputed, where the effect of the order would be to establish the right, even if the court is satisfied that the person against whom the demand is made is fencing off the claim.
- (v) In the disposal of an application for appointment of the Receiver the court always looks to the conduct of the applicant and refuses to appoint the Receiver unless his conduct has been free from blame.

Where to be granted to appoint a Receiver?

For the appointment of Receiver, it is sufficient to show that neither the plaintiff nor the defendant has the suit property, and it is vacant.⁵Where from the written objection itself a strong presumption arises against the defendants' title, the Receiver is appointed.

Where to be refused to appoint a Receiver?

A Receiver will not be appointed when the rights between the plaintiff and defendant are doubtful if the defendant has obtained the legal estate without fraud, and if no case of danger as to his security is alleged. Similarly, a Receiver will not be appointed over a defendant's property to enforce his appearance in the suit if he resides outside the jurisdiction unless the plaintiff has a specific lien upon the land or there is danger of immediate loss of the property.⁶It was a general rule of English equity not to appoint a Receiver where the party has the power to help himself, as by re-entry, by distress, and so on.

Who may be a receiver under the Civil Procedure Code and Specific Relief Act?

A person who is independent, impartial, and disinterested should normally be appointed as receiver. Generally, a party to the suit should not be appointed as a receiver by the court. But the rule is not rigid or inflexible. In exceptional circumstances or for special reasons, a party to a suit or proceedings can also be appointed as receiver. ⁷Under Order 40 of CPC and Section 44 of the Specific Relief Act, The Receiver is an independent and impartial individual who is appointed by the court to administer/manage, that is, to secure and protect a debated property included in a suit. For illustration, in a debate between A and B for immovable property, in case the court considers that it is within the best interest of both the parties that owners ought to be too taken from B and given

to an independent individual, the court may designate a collector who can manage the property till the time the suit is being chosen.⁸ Such a receiver appointed by the court would be capable of the maintenance of the property. He can collect the wage gathering like a lease or any other benefits and utilize it to preserve the property. After deducting the costs caused by maintenance from the wage gotten from the property, the collector will have to yield the remaining income, if any, in court.

What is the reason for the arrangement of a receiver?

When a party in possession of the debated property debilitates the property or causes irreparable harm to it, the whole question of the suit gets vanquished since the subject matter ceases to exist or its value gets influenced. Hence, when the court is of the supposition that the property in the debate must not go to either of the parties, the court names a receiver who is endowed with the security and conservation of such property. It may be the shape of an interim assurance that the court gives to the parties who make the application till the time the court adjudicates the matter.

Who can entitle a receiver?

According to the civil procedure code, the court sometime recently in which the proceedings are pending can appoint a receiver if it shows up fair and helpful to the court to delegate such collector. It is inside the optional control of the court to designate the collector. For illustration, in a suit, the trial court can delegate a collector. While, in the request, the re-appraising court can name a collector. However, the tact isn't absolute, arbitrary, or unregulated. The expression "just and convenient" does not cruel the appointment is based on the impulses and wishes of the judge on any grounds that stand against equity. For the most part, a plaintiff applies to the appointment of a receiver but respondents can record such an application. A third party isn't permitted to record the application but if he is inquisitive about the assurance and conservation of the property, he can also make an application after taking permission from the court. The court must keep the taking after standards in intellect before designating a receiver:

The appointment of a receiver could be an optional power.

1. It may be a defensive alleviation to the plaintiff. The protest is to protect and protect the debated property till the time the suit is pending in court.
2. A receiver ought to not be designated unless the offended party appears prima facie that he includes a strong case against the litigant and it is more than likely that he will succeed within the suit.
3. Appointment of a receiver is one of the hardest cures because it deprives the litigant of his right to possession sometime recently the ultimate declaration. Hence, the court ought to not resort to it just because it will do no hurt.
4. The court should keep the taking after standards in intellect sometime recently the court ought to not resort to it merely on the ground that it'll do no hurt. There ought to be solid trepidation that there is a threat to the property or the offended party will be in more awful of a circumstance if the appointment of a receiver is postponed.
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7. The court ought to appoint a receiver as it were when there's a plausibility of wrong or damage. Too, in case it appears that the subject matter isn't within the possession of any of the parties and it is in the common intrigued of both parties to name a collector for the security and conservation of the property.
8. The court ought to look at the conduct of the party who makes the application for the 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 impartial relief.

What is the role of a receiver?

The Recipient is regarded as an officer of the court and is the expanded arm and hand of the court. He is dependent on the duty to get debated property or cash given by the court and oversee such property or cash till the time a decree is passed or the parties have compromised or any other period as the court considers fit. The property or finance dependent on the receiver is considered to be *custodial legis* i.e. within the care of the law. The Recipient has no control other than those depending on him by the court while naming him. A person who is independent, impartial, and completely unengaged ought to be designated as a receiver. Such an individual ought to not have any stake within the debated property by and large; parties to the suit are not designated as a collector by the court. But in uncommon circumstances, a party to suit can be appointed as a receiver.

When can a receiver be appointed?

The court can designate a collector at whatever point the court is of the supposition that either party ought to hold the property in dispute. The court can designate a collector before or after a decree and can expel any person from the ownership or custody of the property and commit the same property in the care or management of the receiver. Under the code itself, the receiver can be named to avoid the closes of equity from being defeated. Additionally, for the execution of a decree, the court has the power to appoint a receiver. There are provisions in special acts that give for the appointment of a receiver by the court.

What are the powers of a receiver?

Receivers are entitled to remuneration as settled by the court for the administrations rendered by them. Too, a receiver should be given for the misfortune or costs caused by him for maintaining the property. Under arrange 40, the court can settle the compensation to be paid to the recipient for the administrations given by him.⁹ The court can pass a common or particular arrangement concerning the same. Under order 40 rule powers of the receiver are given as follows:

- a) Collection of rents and benefits emerging out of the property.
- b) Application and transfer of such rents and profits.
- c) Execution of reports as the proprietor himself.
- d) Organized and protected the suit.
- e) Such powers as the court may consider fit.

Also, there are backhanded powers that a recipient appreciates being the hand of the court. For illustration, if an individual discourages or meddling with the receiver's right to ownership, it will sum to obstruction in a court and such a person can be made obligated for scorn of court. Similarly, property in the hands of the receiver cannot be attached without the take-off of the court.

What are the obligations of a receiver?

Under order 40, the duties of a receiver are given as follows:

1. Furnish security to account for what he will receive from the property as income.
2. Yield accounts (half-yearly) for such period or form as coordinated by the court. The account essentially incorporates the wages received and costs caused for the security and preservation of the property.
3. Pay the sum due to the court.

4. Take duty for any lessening in the value of the property because of the receiver's willful negligence.

Release the duties actually and should not delegate or relegate any of the rights depended on him by the court.

The receiver should satisfy all the obligations and duties entrusted to him by the court. Otherwise, the court can take action against him and make him personally liable for any misfortune that might occur due to his negligence or willful disappointment in securing and protecting the property.

What are the liabilities of a receiver?

The receiver is bound to keep down the expenses and take care of the property in his possession as a judicious man would observe in association with his possessed property under comparable circumstances.

According to Order 40, when a receiver fails:

1. To yield the reports as indicated by the court or,
2. To pay the sum due to him as coordinated by the court or,
3. Causes misfortune to the property due to net negligence.
4. Any other obligation which the court coordinated him to do.

The court may order the attachment of the property of the receiver to recuperate the loss caused due to his willful default or negligence. The court, after recovering all the losses from the proceeds gotten after offering the receiver's property, will pay the balance (if any) to the receiver.

Conclusion:

The receiver plays a vital part whenever the court requires the collector to oversee the subject matter in a suit to ensure and protect it till the time, the court orders the suit. The recipient is an officer of the courts and the subject matter overseen by him is considered to be in the care of the law. The court appoints a receiver when the court is of the supposition that not one or the other of the party ought to manage the property till the time the matter is chosen. Any individual can become a receiver given they satisfy the prerequisites set by the court. A receiver ought to be of an unbiased, free, and uninterested character that has no stake within the subject matter and can oversee the property fairly as a judicious man will do with his claim property. Court has vested certain powers and duties on the receiver which he ought to utilize to manage the property in a perfect way the most perfect way possible. The recipient ought to use caution when making a vital choice related to the subject matter as he is personal.

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