

Special Legal Issues Seminar

Scope of Receivership under C.P.C. Order 40 in IP Law Suits

Introduction

- ❖ **Order XL** of the Code of Civil Procedure, 1908 deals with the process of appointment of receivers, their remuneration, duties and the procedure for the enforcement of these duties.
- ❖ The term '*receiver*' has not been defined under the Code of Civil Procedure, 1908, but has been explained in numerous judgements of the Indian and foreign courts.
- ❖ In *T. Krishnaswamy Chetty v. C. Thangavelu Chetty And Ors.* [AIR 1955 Mad 430], the court held that a receiver, is an indifferent 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.
- ❖ If the court considers that a party in possession of the disputed property is likely to exhaust the property or cause irreparable damage to it, thereby defeating the entire object of the suit, the court designates a recipient (*known as a receiver*) to whom the security and maintenance of that property is entrusted.
- ❖ A receiver acts as an officer of the court who exercises his functions in the interest of neither the plaintiff nor the defendant and the property entrusted to his care is regarded as being in 'custodia legis'.

Relevant Provisions of the Code of Civil Procedure, 1908

❖ Order XL Rule 1. Appointment of Receivers. —

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

(a) appointment 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 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.”

❖ Order XL Rule 2. Renumeration. —

“The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.”

Relevant Provisions of the Code of Civil Procedure, 1908 (Contd.)

❖ Order XL Rule 3. Duties. —

“Every receiver so appointed shall—

- (a) furnish such security (if any) as the court thinks fit, duly to account for what he shall receive in respect of the property;*
- (b) submit his accounts at such periods and in such form as the Court directs;*
- (c) pay the amount due from him as the Court directs; and*
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.”*

❖ Order XL Rule 4. Enforcement of receiver’s duties. —

“Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or*
- (b) fails to pay the amount due from him as the Court directs, or*
- (c) occasions loss to the property by his willful default or gross negligence,*

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.”

Important Principles to be Borne in Mind by The Court Before Appointing a Receiver

- ❖ The following guidelines regarding the appointment of a receiver were introduced by the Madras Court in the case of *T. Krishnaswamy Chetty v. C. Thangavelu Chetty and Ors.* [AIR 1955 Mad 430] and are now well established in the Indian jurisprudence.
 - (a) Appointment of a receiver is a discretionary power.
 - (b) 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.
 - (c) 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.
 - (d) 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 appoint a receiver only when there is a possibility of wrong or injury.
 - (e) The court should look at the conduct of the party who makes the application for appointment of a receiver.
- ❖ It has been established that the courts should keep all the above principles in mind before appointing a receiver in any matter.

Relevant Case Laws

❖ ***Hiralal Patni v. Loonkaram Sethiya & Others* [1962 SCR (1) 868]**

“The legal position with regard to the continuance of receivers is that:

- (i) if a receiver is appointed in a suit until judgment, the appointment is brought to an end by the judgment in the suit;*
- (ii) if a receiver is appointed in a suit without his tenure being expressly defined, he will continue till he is discharged;*
- (iii) even after the final disposal of the suit, though as between the parties to the suit, his functions are usually terminated, the receiver continues to be answerable to the court till he is finally discharged, and*
- (iv) the court has ample power to continue the receiver even after the final decree if the exigencies of the case so require.”*

Relevant Case Laws (Contd.)

- ❖ *Sree Venkataramana Temple Board of Education, Karkala v. C. Manjunatha Kamath* [AIR 1974 Kant 59]

*“If circumstances of any case justify the appointment of a receiver, the Courts do well in exercising discretion by appointing a receiver and preserving the property in dispute. Order XL. Rule 1, Civil P. C gives a wide power to the Court to appoint a receiver, if it is just and convenient Such appointment could be made at any time not only on the application of a party to the suit but also of **one who is not a party to the suit but interested in the preservation of the property. It can do so even suo motu.** There is no inflexible rule that the Court should not appoint a receiver to manage the suit properties in respect of which there is an injunction in favour of one of the parties to the suit.”*

- ❖ *Kanhaiyalal v. Dr. D. R. Banaji & Ors.* [1958 AIR SC 725]

“Proceedings taken in respect of a property which is in the possession and management of a Receiver appointed by Court under Order 40, Rule 1 of the Code of Civil Procedure, without the leave of that Court, are illegal in the sense that the party proceeding against the property without the leave of the Court concerned, is liable to be committed for contempt of the Court, and that the proceedings so held, do not affect the interest in the hands of the Receiver who holds the property for the benefit of the party who, ultimately, may be adjudged by the Court to be entitled to the same.”

Relevant Case Laws (Contd.)

- ❖ ***State Bank of India v. Trade Aid Paper and Allied Products (India) Pvt. Ltd. & Ors.* [AIR 1995 Bom 268]**

“The powers of the Court under Order 40, Rule 1 of the Code of Civil Procedure are to be exercised to advance cause of justice and what is „just and convenient“ depends upon the nature of the claim and the surrounding circumstances. The Court should not close eyes to the realities and blindly follow the principles laid down 50 years before when the suits by Banks and financial institutions were a novelty. The economic liberalization and the policy of the Government to grant loans for various activities have increased the number of suits by Banks and financial institutions and in this Court every year more than 2,000 suits are instituted. It would not be difficult to imagine how much public money is involved in these suits and how long the Nationalised Banks and financial institutions are deprived of their dues. The Court should be conscious of these facts and should be more pragmatic in exercising powers under Order 40, Rule 1 of the Code of Civil Procedure.”

Applicability of Order 40 in IP Suits

❖ *Receiver v. R. R. Ommerbhoy Pvt. Ltd. and Ors.* [2003 (27) PTC 555 Bom]

- The Plaintiffs filed the present suit for restraining the defendants from infringing their registered trade mark. The registered proprietor of the trade mark was a partnership firm under dissolution. Therefore, the suit was instituted by the Court Receiver, appointed as Receiver of the assets of the partnership firm in a suit for dissolution of the firm. In his appointment order the court stated that “ *The Court Receiver shall however be entitled to take steps that may be necessary to safeguard the trade marks of the firm as also take action against the persons who may be unauthorisedly using the trade marks of the firm.*”
- The defendants however, contended that the suit for infringement of a registered trade mark can only be filed by the registered proprietor of the mark and, in no case, by the Receiver who has no proprietary rights in it.
- The Court held that: “*The Receiver on whom all the powers of the registered proprietor are conferred in relation to trade mark must, therefore, be held to be perfectly competent to exercise the rights conferred by Section 28, including the right to obtain relief in respect of infringement of the trade mark in the manner provided by the Trade and Merchandise Marks Act, 1958. In law and for all practical purposes, the Receiver stands in the shoes of the owner and must be held entitled to do all such acts necessary for the preservation and protection of the property, including trade marks [Emphasis Supplied], for which he is appointed a Receiver.*”

Applicability of Order 40 in IP Suits (Contd.)

- ❖ ***Cargil India Private Limited v. M/s. M.M. Oil Enterprises* [Notice of Motion No 1107 of 2019 in COMIP No. 425 of 2017]**
 - Plaintiff filed a suit against the Defendant who was infringing the Plaintiff's copyright subsisting in the label mark/trade dress. The Plaintiff also alleged that the Defendant had committed an act of 'passing off' by adopting a deceptively similar impugned mark/packaging material as against the Plaintiff's label mark/trade dress.
 - The Court restrained the Defendant from infringing the Plaintiff's copyright subsisting in its label mark/trade dress and from 'passing off'. The Court also appointed a Court Receiver to search and seize the impugned goods/packaging materials bearing the impugned mark. Accordingly, the Court Receiver seized and sealed the impugned goods/packaging materials of the Defendant. At this time, the Defendant had executed an Undertaking/Indemnity Bond to preserve the material sealed by the Court Receiver. Later, as the Defendant failed to appear before the Court. Resultantly, the receivership of the sealed goods was to continue till the disposal of the suit.

Applicability of Order 40 in IP Suits (Contd.)

- ❖ ***Prince Pipes And Fittings Limited v. Prince Platinum Pipes And Fittings* [Commercial IP Suit (L) No. 5286 of 2021]**
 - The Plaintiff, Prince Pipes uses the mark “PRINCE” in conjunction with a crown device as a registered trade mark in relation to its PVC pipe products. The adoption of the mark itself goes back to 1996. The defendant, Prince Platinum Pipes was using “PRINCE PLATINUM” to trade the goods and also created a website with domain name “www.princeplatinumplastindia.com” for trading the goods similar to plaintiff. The plaintiff instituted a suit of infringement against the defendants. The court gave interim orders and restrained defendant from using the impugned trade mark “PRINCE PLATINUM”, the impugned domain name “www.princeplatinumplastindia.com” and/or impugned business name “Prince Platinum Pipe & Fittings” and/or any other impugned mark/domain name/business name/trading style containing the word PRINCE deceptively similar to the Plaintiff’s well-known trade mark “PRINCE” in respect of plaintiff’s business. The court also appointed a court receiver as the receiver of defendants’ goods, stamps, printing materials, labels, brochures, pamphlets, flyers, advertising material, papers, stationery, printed matter, things and such material and documents of the Defendants bearing or containing the impugned trade mark “PRINCE PLATINUM”.

Key Takeaways

- ❖ The receiver plays an important role whenever the court requires the receiver to manage the subject matter in a suit to protect and preserve it till the time, the court decrees the suit.
- ❖ The receiver is an officer of the courts and the subject matter managed by him is considered to be in custody of the law. The court appoints a receiver when the court is of the opinion that neither of the party should manage the property till the time the matter is decided.
- ❖ A receiver should be of impartial, independent and indifferent character who has no stake in the subject matter and can manage the property just as a prudent man will do with his own property. Court have vested certain powers and responsibilities on the receiver which he should use to manage the property in the best way possible.
- ❖ The receiver should be careful while making an important decision related to the subject matter as he is personally liable for any damage to it. He can seek the permission of the court before making such decisions to be safe.
- ❖ A receiver in aid of execution is an excellent way of liquidating intellectual property assets to satisfy a judgment. The court may appoint a receiver to enforce the judgment where the judgment creditor shows that, considering the interests of both the judgment creditor and the judgment debtor, the appointment of the receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment.

THANK YOU!

Questions?

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