**APPLICATION UNDER ORDER 40, RULE 1, C. P. C.**

IN THE COURT OF....................

Suit No..................... of 19........................................

CD................................................................... Plaintiff

*versus*

C. F................................................................ Defendant

The applicant most respectfully submits as under: —

1. That the present suit has been filed by the applicant for recovery of possession of the property situate at.................... against the defendants.

2. That the aforesaid is commercial property and when it is given on rent, is going to fetch more than Rs..................... per year.

3. That the defendants have no property of their own within the jurisdiction of this Hon’ble Court.

4. That in the circumstances it is therefore expedient in the ends of justice that a receiver be appointed by the Court to take possession of the suit property and to realise the rent and deposit the same in this Hon’ble Court.

**PRAYER**

It is, therefore, most respectfully prayed that a Receiver may be appointed by this Hon’ble Court to take possession of the suit property.

It is prayed accordingly.

Applicant

Through Advocate

Place: .....................

Dated: .....................

**CASE LAW**

***Order 40 Rule 1***

**APPOINTMENT OF RESPONDENT AS RECEIVER—PETITIONER’S COUNTER CLAIM REJECTED—PROPRIETY OF.**

The receiver was appointed for managing Colliery pit in dispute. He was authorised to appoint an agent for working the pit in question. One or the other of the parties was to be appointed as the agent undisputably. The respondent accepted

the offer made by the receiver. Thereafter the petitioner also expressed his willingness to accept the offer but by way of a counter offer raising the minimum guarantee. After consulting the Advocate General of West Bengal, the Receiver held that there was a concluded contract between him and the respondent, and he appointed the respondent as his agent to work pit I.

That from the facts set out, it is absolutely clear that the receiver had acted in the most proper manner. There is no basis for the allegation made by the petitioner that he had been coerced to appoint the respondent as his agent. The fact that at one stage the respondent had filed an application to the Supreme Court to remove the receiver can in no manner be said to have influenced the decision of the receiver to appoint the respondent as his agent. There were no grounds to think that the receiver had acted either improperly or under coercion1.

**APPOINTMENT OF RECEIVER — ACT DONE IS SUBJECT TO DIRECTIONS AND ORDERS OF COURT.**

Any act of the Receiver done on behalf of the court *pendente. lite* and anyone who gets possession through such an act could only do so subject to the directions and Orders of the Court. The tenancy created in favour of "T" by the Receiver is in violation and contrary to the injunction order and such an act is subject to the direction and order of the Court appointing the Receiver. Therefore, the tenancy created in favour of "T" was in breach of the order of the Court and consequently "T" cannot claim any protection under the provisions of the Act and they are liable to be evicted2.

**APPLICATION FOR APPOINTMENT OF RECEIVER—DEFAULT IN PAYMENT OF INSTALMENT TO FINANCIAL CORPORATION-MILL OWNER WILLING TO DEPOSIT INSTALMENT — ORDER SET ASIDE.**

An affidavit has been filed by the appellant that the amount of Corporation has been paid. The only amount that remains due is penal interest but its waiver is under consideration of the corporation.

In the circumstances there is no merit in the submission of the learned counsel for the respondent that the order of the High Court directing handing over of the mill to receiver should not be interfered. The running of the Mill, in the circumstances of this case by the family member, subject to the decision of the suit, shall be just and proper. Moreover the High Court had vacated its order because of the default in payment of instalment to the Corporation. Since that has been complied with we do not think it would be in interest of justice to maintain the order of High Court3.

**JOINT FAMILY PROPERTY—KARTA OF HUF DISPOSING OF SOME PROPERTY IN CONTRAVENTION OF COURT ORDER-APPLICATION FOR APPOINTMENT OF RECEIVER—SUPREME COURT APPOINTING ADMINISTRATOR WITH POWERS AND DUTIES OF RECEIVER.**

Allowing the appeal it was held that it was just and convenient in order to effectively prevent any of the suit properties being dissipated or disposed of and in order to preserve the same that the suit properties should be placed under the management and control of a person other than Karta. The court appointed Administrator in respect of the properties having the same powers and duties of Receiver4.

***Order 40 Rule 1***

**APPOINTMENT OF RECEIVER ON DISSOLUTION OF FIRM**

A receiver is to be appointed as a matter of course when a partnership is dissolved under orders of Court or if a partnership is already dissolved any of the parties come to Court for relief due to him as an ex-partner5.

**WHEN RECEIVER CAN BE APPOINTED**

The Court should appoint a receiver in a mortgage suit as in a suit of any other nature when it is just and convenient6.

**STAGES FOR APPOINTMENT OF RECEIVER.**

The Court has power to appoint a receiver whenever it appears to be just and convenient whether before or after the decree. The jurisdiction to appoint a receiver is not restricted by any words contained in the decree7.

**THIRD PARTY RECEIVER — WHEN MAY BE APPOINTED — CONSIDERATIONS FOR.**

In a case which arises under this Rule, the primary thing which has to be looked into by a court before the wishes of the parties are acceded to is to see how best the suit properties could be preserved without being wasted. The responsibility in courts becomes all the more greater if there is a race as between the two competing parties to possess the suit properties. It is imperative for the courts to see that the suit properties over which such conflicting claims are projected, are not only preserved but are kept without being wasted or without any prejudice, being caused to any one of the parties to the litigation by any overt or covert act on the part of any party to it. It is only to create a harmony and not to ferment disharmony that the intendment of this Rule should be perpetrated8.

**WHEN APPOINTMENT OF THIRD PARTY AS RECEIVER NOT PROPER.**

Where in a partition suit, the appellant is admittedly in possession of a house on an alleged plot of land and is living there with his family members, he had inducted tenants in the other houses and rooms on that plot and till late was realising rent from the said tenants and repairing those houses regularly, the Court below was not justified in appointing a third party as receiver of that plot of land during the pendency of the suit9.

**REMAND TO TRIAL COURT FOR APPOINTMENT OF RECEIVER**

As regards the appointment of receiver, where no orders were passed by the Trial Court and as such no appeal was competent, the lower appellate Court was of opinion that the suit shall not have been stayed under section 3 of the Arbitration Act, then the case should have been sent back to trial court for deciding the application for appointment of receiver.10

**APPOINTING OF RECEIVER (ORDER 40 RULE 1)**

The power to appoint a Receiver *suo motu,* cannot be exercised by the High Court particularly when none of the parties has asked for it.11

**REVIEW — SCOPE**

***Order 40 Rule 1***

The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise.12

**POWER TO APPOINT RECEIVER**

The power to appoint a Receiver *suo motu* cannot be exercised in the manner in which it was exercised by the High Court.13

**"JUDGMENT" — WHAT CONSTITUTES**

***(Section 2(9)/Order 40 Rule 4(2)***

Judgment should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner.14

1. Smt. Bhagwati Debi Goenka v. Kishorilal Goenka and others, (1972) 4 S. C. C. 736: A. I. R. 1974 S. C. 2288: 1972 U. J. (S. C. ) 463.

2. Krishna Kumar Khemka v. Grindlays Bank P. L. C., A. I. R. 1991 S. C. 899.

3. Chanumolu Nirmala v. Ch. Indira Devi, A. I. R. 1994 S. C. 622.

4. Maharaj Jagat Singh v. Lt. Col. Sawati Bhawani Singh, A. I. R. 1993 S. C. 1721.

5. Sharyau Amando Pereira v. Vidinu Yeshwant Sawant, A. I. R. 1981 Goa 57.

6. I. F. Corporation of India v. Takur Paper Mills, A. I. R. 1972 Pat. 83.

7. P. Perraju v. Central Bank of India, A. I. R. 1980 A. P. 283: 1980 L. S. (A. P. )43: (1980) 1 Andh. L. T. 201.

8. Jambogavalli Ammal v. Govindraja Kandiar, A. I. R. 1980 Mad. 103: I. L. R. (1979) 3 Mad. 259: 92 Mad. L. W. 343.

9. Narayan Chand Sahu v. V. Abhimanya Sahu, A. I. R. 1980 Orissa: 48 Cut. L. T. 572.

10. Satinder Singh v. Bachan Singh, 1986 (1) C. C. C. 304 (306)(P&H).

11. Mahendra H. Patel v. Ram Narayan Singh, AIR 2000 SC 3569.

12. Lily Thomas v. Union of India, AIR 2000 SC 1650.

13. Mahendra H. Patel v. Ram Narayan Singh, AIR 2000 SC 3569(1).

14. Balraj Taneja v. Sunil Madan, AIR 1999 SC 3381.