

2010 PLRonline 0101 (Ker.)

KERALA HIGH COURT

Before : Justice Thomas P. Joseph.

MARY & others – Petitioners

Versus

BIJU P. SEBASTIAN – Respondent.

WP(C). No. 18303 of 2010.

14.6.2010

(i) Civil Procedure Code, Order 40 Rule 1 - “just and convenient” explained - AIR 1955 Madras 430 relied.

What is meant by “just and convenient” ? The word, “just” is derived from the Latin word “justus” which came from the Latin word, “jus” which means “a right, more technically a legal right”. The word “just” is defined in Century Dictionary as “right in Law or ethics”. In the Standard Dictionary that word is defined as meaning “conforming to the requirements of right or positive law”. The word “convenience” means “suitability of a thing”. Fletcher Moulton, CJ. in *Edwards & Co. v. Picard* [(1909) 2 KB 903] has construed the expression “just or convenient” occurring in the Judicature Act, Section 25(8) thus : “The effect of the words “just or convenient” is to my mind much the same as “where it is practicable and the interest of justice require it”. Jessel, M.R. in *Beddow v. Beddow* [(1878) 9 Ch.Div. 89] stated that in ascertaining what is “just”, regard must be had to what is “convenient” as well.

[Para 4]

(ii) Civil Procedure Code, Order 40 Rule 1 - Receiver is regarded as one of the harshest remedy which the law provides for the enforcement of its rights - The principles relating to appointment of a Receiver can be enumerated as under :

i. The object of appointing a Receiver is to preserve the subject matter of litigation pending decision of the case.

ii. Court has the discretion to appoint Receiver when it appears to the court to be just and convenient to do so.

iii. The discretion must not be exercised arbitrarily or in an unregulated manner. It must be exercised judicially and cautiously and in accordance with the legal principles on a consideration of the whole circumstances of the case bearing in mind that ‘discretion’ is the power to do justice and it in itself implies a vigilant circumspection and care.

iv. Appointment of a Receiver is considered to be a very harsh remedy and hence the jurisdiction has to be exercised only in extreme cases with utmost care and caution.

v. Court while considering question of appointment of Receiver does not finally decide on merit of the case.

vi. A Receiver cannot be appointed merely because it is expedient to do so; nor merely because it will do no harm to do so.

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