

ACTS OF SRI LANKA

Debt Recovery (Special Provinces)

Act No 2 of 1990

AN ACT TO PROVIDE FOR THE REGULATION OR THE PROCEDURE RELATING TO DEBT RECOVERY BY LENDING INSTITUTIONS AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows; "

Short title **1.** This Act may be cited as the Debt Recovery (Special Provisions) Act No. 2 of 1990.

PART I

INSTITUTION OF ACTION

Action by lending institution for recovery of action. **2.**

(1) A lending institution (hereinafter referred to as the "institution") may, subject to the provisions of subsection (2) recover debt due to it by an action instituted in terms of the procedure laid down by this Act in the District Court within the local limits of whose jurisdiction"

(a) a party defendant resides; or

(b) the cause of action arises; or

(c) the contract sought to be enforced was made.

(2) No action shall be instituted by an institution in terms of the procedure laid down by this Act, for the recovery of any loan, where the principal amount lent or advanced was less than one hundred and fifty thousand rupees.

Institution of action.

3. An action under this Act shall be instituted by presenting a plaint in the form specified in the Civil Procedure Code (Chapter 101).

Instrument agreement or document sued on to be produced. **4.**

(1) The institution suing shall on presenting the plaint file an affidavit to the effect that the sum claimed is justly due to the institution from the defendant and shall in addition produce to the court the Instrument, agreement or document sued upon or relied on by the institution,

(2) If any instrument, agreement or document is produced to court and the same appears to the court to be properly stamped (where such instrument, agreement or document is required by law to be stamped) and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be barred by prescription, the court being satisfied of the contents contained in the affidavit referred to in subsection (4), shall enter a decree nisi in the form set out in the First Schedule to this Act in a sum not exceeding the sum mentioned in the plaint together with interest upto the date of payment and such costs as the court may allow at the time at making the decree nisi together with such other relief prayed for by the institution as to the court may seem meet and the decree nisi shall be served on the defendant in the manner hereinafter specified.

(3) The day to be inserted in the decree nisi as the day for the defendant's appearance and showing cause, if any, against it shall be as early a day as can conveniently be named, regard being had to the distance from the defendant's residence to the court.

(4) The affidavit to be filed by the institution under subsection (1) shall be made by any director or a principal officer of such institution or by an attorney-at-law duly authorised to bring and conduct the action on behalf of the institution and which affidavit shall be made by such person having personal knowledge of the facts of the cause of action and such person shall in his affidavit swear or affirm that he desposes from his own personal knowledge to the matters therein contained and shall be liable to be examined as to the subject matter thereof at the discretion of the judge

(5) The institution shall tender with the plaint"

(a) the affidavit and instrument, agreement or document referred to in subsection (1) of this section;

(b) draft decree nisi; and

(c) the requisite stamps for the decree nisi and service thereof.

Procedure for serving decree nisi on defendant. **5.**

Where a decree nisi is entered under section 4 the Provisions of action 705A and 705B of the Civil Procedure Code (Chapter 101) shall, mutatis mutandis, apply to the service of such decree nisi on the defendant.

Defendant not to appear or show cause except with leave. **6.**

(1) In an action instituted under this Act the defendant shall not appear or show cause against the decree nisi unless he obtains leave from the court to appear and show cause

(2) The court shall upon the application of the defendant give leave to appear and show cause against the decree nisi either,"

(a) upon the defendant paying into court the sum mentioned in the decree nisi; or

(b) upon the defendant furnishing such security as to the court may appear reasonable and sufficient for satisfying the sum mentioned in the decree nisi in the event of it being made absolute; or

(c) upon affidavits satisfactory to the court that there is an issue or a question in dispute which ought to be tried. The affidavit of the defendant shall deal specifically with the plaintiff's claim and state clearly and concisely what the defence is and what facts are relied on in support of it.

(3) In default of the defendant obtaining such leave for appearance and showing cause the court shall make the decree nisi absolute, and the provisions of section 385 of the Civil Procedure Code (Chapter 101) shall,

- mutatis mutandis, apply to such order. For tills purpose, the Judge shall endorse the words " Decree nisi made absolute " (or words to the like effect) upon the decree nisi and shall date and sign such endorsement.
- Procedure where leave to appear and defend is guaranteed. Court may order deposit of instrument agreement or documents. Recovering of expenses incurred in noting.
7. If the defendant appears and leave to appear and show cause is given the provisions of sections 384, 385, 336, 387, 388, 390 and 391 of the Civil Procedure Code (Chapter 101) shall, mutatis mutandis, apply to the trial of the action.
8. In any proceeding under this Act the court may order the instrument, agreement or other documents which are produced to the court with the plaint or on. which the action is founded to be forthwith deposited with an officer of the court, and may further order that all proceedings shall ho stayed until the institution gives security for the costs thereof.
9. Where the institution is the holder of a dishonoured bill of exchange or promissory note it shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise by reason of such dishonour as such institution has under this Act for the recovery of the amount of such bill or note.
- Roll.
10. In the court where cases may be instituted under this Act a Special Inquiry Roll shall he kept of such cases in which leave to appear and show cause against the decree nisi has been granted, and it shall be competent for the Judge of such court to order such cases to be set down for hearing on such days as may facilitate their early disposal, . any rule or practice of such court to the contrary notwithstanding, and after giving the parties, reasonable notice of the date of inquiry.
- Damages against institution.
11. If it appears to the court thai the decree nisi was obtained on insufficient grounds, or if after the entering of a decree nisi the action is dismissed and the decree nisi is discharged by default or otherwise, and it appears to the court that there was no reasonable ground for entering the decree nisi, the court may, In the same action on the ap lication of the. party against whom the decree nisi was entered, award against the institution obtaining the same, such sum as it deems reasonable compensation for the expense or injury caused to such party by the entering of the decree nisi and an award under this section shall bar any action for compensation in respect of the entering of the decree nisi.
- Adjustment of action.
12. Where the defendant appears in court in response to the decree nisi and does not contest the decree nisi but admits liability and prays to liquidate the debt in instalments, the court dull minute this fact on the record and obtain the defendant's signature thereto. The court shall thereafter make the decree absolute and shall enter terms of settlement as to instalments for the liquidation of the debt sued for in term of section 408 of the Civil Procedure Code (Chapter 101). Such settlement shall operate as a stay of execution proceeding unless, the defeandent acts in breach of any of the terms of settlement in which event the institution shall be entitled to execute the decree.

PART II

OF SPECIAL PROVISIONS RELATING TO EXECUTION

- decree absolute deemed to be a Writ.
13. Subject to orders of court, where a decree nisi entered in an action instituted under this Act is made absolute it shall be deemed to be a Writ of Execution duly issued to the Fiscal in terms of section !S5 (3) of the Civil Procedure Code (Chapter 101) and it shall be the duty of the Fiscal to execute the same in the manner prescribed in the Civil Procedure Cede for the execution of Writs.
- Resistance deemed to be contempt.
- 14
- (1) If the Fiscal be resisted by any person ,while executin\g a writ referred to in section 13 the Fiscal shall report such resistance to the court and the court shall thereupon issue a notice against the person resisting requiring him to show cause as to why he should not be dealt with for contempt of court occasioned by such resistance.
- (2) Any person resisting the Fiscal while executing a writ under this Act shall be deemed to be guilty of contempt of Court ar>d shall be liable to the penalties prescribed for contempt of court by the Judicature Act, No. 2 of 1978 and the Civil Procedure Code (Chapter 101) unless he proves that the property sought to be seized belonged to a person other than the judgment debtor
- (3) If the person resisting the Fiscal appears in court and claims that the property sought to be seized by the Fiscal is being held by him on account of any person other than the judgment debtor or person holding under such judgment debtor such person shall be called upon to furnish security for the satisfaction of the decreed turn or such part thereof as the court deem fit in all the circumstances of the ease, in the event of his claim failing or in the discretion of court such person may be allowed to give an undertaking that the property sought to be seized would remain in constructive Fiscal custody until the claim inquiry ls concluded.
- Alienation of property by judgement debtor after Institution of action.
- 15.
- (1) Whenever an action is instituted under this Act the same shall be entered in a special register maintained by court substantially in the form set out in the Second Schedule to this Act.
- (2) Where the defendant or his representative in in-turest alienates any movable or immovable property or otherwise disposes of same in any manner whatsoever after the decree nisi such alienation shall be null and void and of no force or effect in law and shall be open to seizure in whosoever's hands such property may be :
- Provided that such alienation shall be valid if the action is dismissed or the decree nisi is discharged : and
- Provided (further that such alienation shall also be valid, if the decree absolute is satisfied, but only in respect of such of the property alienated as has not been seized and applied in satisfaction of the decree absolute: and
- Provided further that such alication shall also be valid property in' the hands of an alienee who has come by such property in good faith for consideration without having notice of the decree nisi either of the time the purchase money was paid, or when the conveyance was executed nor to an alienee from such an alienee, the burden of proof of which facts shall be on such alienee.
- (3) The Registrar of the court shall in addition to the register to be maintained under this section maintain also an index of the names of the defendants against whom actions have been filed under this Act and such index shall be in

alphabetical order.

(4) Such register and index shall be open to public inspection and entries therein shall constitute prima facie notice to the public.

(5) All claims to property seized by whomsoever made shall be disposed of in the same action and a decision on such claim shall be a bar to the institution of any other action for the recovery of any property seized or to establish any right to such property or to have the same declared liable to be sold in execution of the decree in favour of the institution.

(6) Nothing in subsection (2) applies to money or currency notes in the hands of a bona fide holder to whom they have passed in circulation, or to negotiable instrument in the hands of bona fide holder for value or shall be deemed to effect -section 22 and 23 of the Sale of Goods Ordinance, of the rights of any holder in good faith for consideration of any document of title which by law passes the ownership of goods to which it relates by endorsement or delivery of the liability of a person to whom a debt or charge is transferred, or the right of a person who holds property under a title declared indefeasible by statute or of his successor in title.

PART III

OF APPEALS

Amendment of section 758 (7) of the Civil Procedure Code. **16.** Subsection (7) of section 756 of the Civil Procedure Code is hereby amended by the addition of the following proviso at the end thereof : "

" provided however that in an application for leave to Appeal in respect of any order made in the course of any action instituted under the Debt Recovery (Special Provisions) Act No. 2 of 1990 proceedings in the original court shall not be stayed when Leave to Appeal is granted unless the Court of Appeal otherwise directs and the Court of Appeal shall where it decides to grant Leave to Appeal call upon the appellant to give security in cash or by a guarantee from a banker for the satisfaction of the entire claim of that plaintiff or such part thereof as the court deem fit in all the circumstances of the case, in the event of the appeal being dismissed."

Amendment of section 763 of the Civil Procedure Code **17.** Section 763 of the Civil Procedure Code is hereby amended by the addition immediately after paragraph (b) of subsection (2) of that section, of the following:-

"Provided that in the case of decrees entered under the provisions of the Debt Recovery (Special Provisions) Act No. 2 of 1990 the security to be given by the judgment debtor shall be the full amount of the decreed sum or such part thereof as the court deem fit in all the circumstances of the case."

Amendment of Section 23 of the Judicature Act. **18.** Section 23 of the Judicature Act No. 2 of 197B, as amended by section 2 of Act No. 37 of 1979 is further amended by the addition at the end of that section of the following proviso:

"Provided that in the case of decrees entered under the Debt Recovery (Special Provisions) Act No. 2 of 1990 the amount of the Bond to be entered into shall be the decreed sum or such part thereof as the court deem fit in all the circumstances of the case."

PART IV

OF SPECIAL PROVISIONS

Casus omissus. **19.** In any matter or question of procedure not provided for in this Act the procedure laid down in the Civil Procedure Code (Chapter 101) in a like matter or question shall be followed by the court if such procedure is not inconsistent with the provisions of this Act.

Forms. **20.** Where no form to be used for the purpose of this Act has been prescribed in any particular case or for any particular purpose such form as the court may approve may be used in that case or for that purpose.

Action not to be entertained in certain circumstance where interest claimed exceeds sum due as principal. **21.** No action by a lending institution for the recovery of a loan"

- (a) not exceeding two hundred fifty thousand rupees or such other sum as the Minister may, by Order published in the Gazette, fix ; or
(b) recoverable over a period of not less than five years,

due to such lending institution, in terms of the procedure laid down by this Act, shall be entertained by any court if the amount claimed as interest on such loan exceeds the sum due as principal.

No sum of money to be recovered as penalty for default. **22.** No sum of money which constitutes a penalty for default in payment, or delay in payment, of a debt shall be recoverable in an action instituted for the recovery of such debt, in terms of the procedure laid by this Act.

Interest. **23.** In an action instituted under this Act the court shall in the decree nisi, order interest agreed upon between the parties up to the date of decree nisi, and interest at the same rate on the aggregate sum of the decree nisi from the date of decree nisi until the date of payment in full. In the event of the parties not having agreed upon, the rate of interest, the court shall in the decree nisi order interest at the market rate from the date of institution of action up to the date of decree nisi and thereafter on the aggregate sum of the decree nisi from the date of decree nisi until the date of payment in full.

PART V

MISCELLANEOUS

Exemptions. **24.** Nothing in the Debt Conciliation Ordinance (Chapter 31) and the Money Lending Ordinance (Chapter 80) shall apply to, or in relation to, an institution.

Offences. **25.**

(1) Any person who"

(a) draws, a cheque knowing that there are no funds or not sufficient funds in the bank to honour such cheque ; or
(b) makes an order to a banker to pay a sum of money which

payment is not made by reason of there being no obligation on such banker to make payment or by reason of the payment having been countermanded; or

(c) gives an authority to an institution to pay a sum of money to itself, in payment of a debt or loan or any part thereof owed to such institution, from, and out of an account maintained or funds deposited, by such person with such institution and such institution is unable to make such payment to itself by reason of such person not placing adequate funds in such account or by reason of the funds deposited having been withdrawn by reason of such person countermanding the authority given or by reason of any one or more of such reasons; or

(d) having accepted on inland bill dishonours it by non-payment, shall be guilty of an offence under this Act and shall on conviction by a Magistrate after summary trial be liable to punishment with imprisonment of either description for a term which may extend to one year or with fine of ten thousand rupees or ten per centum of the full value of the cheque, order, authority or inland bill in respect of which the offence is committed, whichever is higher, or with both such fine and imprisonment,

(2) The expressions 'cheque', 'dishonoured', 'banker', 'Inland Bill' and 'Bill' shall have the respective meanings assigned to them in the BILLS of Exchange Ordinance (Chapter 32), and the term "dishonest" shall have the same meaning as in section 22 of the Penal Code (Chapter 19).

26. Notwithstanding anything to the contrary in the Prescription Ordinance where an institution has instituted action for the recovery of any debt due to it and such action is pending on the date of commencement of this Act, such institution shall be entitled to institute action under this Act for the recovery of that debt; Provided that this section shall not apply to any pending action where the cause of action on the debt was prescribed as at the date of the institution of such first mentioned action.

Appointment of representative of deceased debtor or of deceased party to an action under this Act.

27.

(1) Where any debtor of an institution die-; before the institution of an action under this Act in respect of any debt owed to the institution or and debtor of an institution or any person who is or becomes a party to an action instituted under this Act dies after the institution of the action and grant of probate of the will or issue of letters of administration to the estate of the deceased has not been made, the court in which the action is to be or has been instituted may in its discretion, after the service of notice on such persons, in any, and after such inquiry as the court may consider necessary, make order appointing a person to represent the estate of the deceased for the purposes of the action and such person may be made or added as a party to the action.

(2) In making any appointment under subsection (2) the court shall appoint as representative a person who, after summary inquiry, appears to the court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued;

Provided, however, that in the event of a dispute between persons claiming to be entitled to be so appointed, the court shall make such an appointment (whether of one of those persons or of any other person) as appropriate in the opinion of the court, in the interests of the estate of the deceased,

Effect of representative being made a party.

28. Where any appointment is made under section 27 and the person so appointed is a party to the action, every order, decree nisi, decree absolute and sale or thing done in the action instituted under this Act (including the seizure and sale in execution of the property of the deceased debtor or of the deceased party) shall have the like effect as though the executor or administrator of the deceased were a party to the action,

Death, insolvency or unsoundness of mind of debtor after entry of decree absolute.

29. Where any debtor of an institution dies or is adjudged insolvent or a person of unsound mind at any time after the entry of decree absolute in an action instituted under this Act and before the execution of the decree, no proceedings for the execution or enforcement of the decree absolute shall be taken or if taken shall be of any effect, unless the duly appointed executor of the will or administrator of the estate of the deceased or 'if representative appointed under section 27 or as the case may be, the assignee or manager' of the estate of the insolvent or person of unsound mind, is made a party to the action.

Interpretation.

30. In this Act, unless the context otherwise requires"

"debt" means a sum of money which is ascertained or capable of being ascertained at the time of the institution of the action, and which is in default, whether the same be secured or not, or Owed jointly or severally, and alleged by a lending institution to have arisen from a transaction in the course of banking, lending, financial or other allied business activity of that institution, but does not include a promise or agreement which is not in writing;

"lending institution" means"

(a) a licensed Commercial Bank within the meaning of the Banking Act, No. 30 of 1988;

(b) the State Mortgage and Investment Bank established by the State Mortgage and Investment Bank Act, No. 13 of 1975;

(c) the National Development Bank established by the National Development Bank of Sri Lanka Act, No. 2 of 1979;

(d) the National Savings Bank established by the National Savings Bank Act, No. 30 of 1971;

(e) the Development Finance Corporation of Ceylon established by the Development Finance Corporation of Ceylon Act (Chapter 165); and

(f) a company registered under the Finance Companies Act, No. 7 of 1988, to carry on finance business;

"market rate" means the rate per centum per annum determined by the Monetary Board of the Central Bank by Notification published in the Gazette, having regard to current rates of bank interest;

"principal officer" in relation to an Institution, means, a director, secretary or other officer not below the rank of a manager of such institution and shall include any other officer of such institution specially authorized by such director, secretary or other officer not below the rank of a manager.

Sinhala text to prevail in case of inconsistency,

31. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Debt Recovery (Special Provisions) Act, No. 2 of 1990 13

FIRST SCHEDULE (Section 4(3))

Form of Decree Nisi

(Title)

This action coming on for disposal before (name and office of Judge) on the day of 19.... and after reading the plaint and documents and being satisfied of the averments contained in the affidavit filed It is ordered and decreed that the defendant do pay to the plaintiff a sum of Rs. together with interest at per centum from (date) to and thereafter interest at the same rate from date here of till payment in full together with costs of action and (where the Decree is for delivery of immovable property, describe the property) (if relief of something other than money or immovable property, set out the relief.)

There are therefore to command the Fiscal Province to levy and make of the houses, lands, goods, debts and credits of the abovenamed by seizure and if necessary by sale thereof, the sum of Rs. which the plaintiff has recovered against the said by this Decree of Court and have that money before this Court within thirty days of this Decree nisi being made absolute or within such extended time as this court shall allow and inform this court what sum or sums and to what person or persons the Fiscal of the Province have sold the property respectively and this Decree Nisi when made absolute shall serve as a Mandate for such purpose.

If (as further ordered) and these are to command you, the aforesaid defendant to appear before this court on the day of 19.... at (time) and show cause, if any, why this Decree Nisi should not be made absolute.

(Signed) (name and office of Judge) the day of 19....

SECOND SCHEDULE (Section 17(1))

(Form of Register)

| No. of action | Name of Plaintiff | Name of Defendant | Claim | Decree nisi (whether made absolute or discharged) | Result | Date of satisfaction | Any other matters |
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