

ACTS OF SRI LANKA

Debt Recovery (Special Provision) (Amendment)

Act No 9 of 1994

AN ACT TO AMEND THE DEBT RECOVERY (SPECIAL PROVISIONS) ACT, NO. 2 OF 1990

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :-

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| Short title. | 1. This Act may be cited as the Debt Recovery (Special provisions) (Amendment) Act, No. 9 of 1994. |
| Amendment of section 2 of Act No. 2 of 1990. | <p>2. Section 2 of the Debt Recovery (Special Provisions) Act, No. 2 of 1990 (hereinafter referred to as the "principal enactment") is hereby amended as follows ;</p> <p>(1) by the repeal of subsection (2) of that section and the substitution therefor of the following subsection;"</p> <p style="padding-left: 40px;">' (2) No action shall be instituted by an institution in terms of the procedure laid down by this Act, for the recovery of any debt, where the sum alleged to be in default is less than one hundred and fifty thousand rupees." ; and</p> <p>(2) by the substitution, for the marginal note to that section, of the following marginal note ;</p> <p>"Action by lending institutions for recovery of a debt."</p> |
| Amendment of Section 4 of the principal enactment. | <p>3. Section 4 of the principal enactment is hereby amended as follows ;</p> <p>(1) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection ; " (1) The institution suing shall on presenting the plaint, file with the plaintiff an affidavit to the effect that the sum claimed is lawfully due to the institution from the defendant, a draft decree nisi, the requisite stamps for the decree nisi and for service thereof and shall in addition, file in court, such number of copies of the plaint, affidavit, instrument, agreement or document sued upon, or relied on by the institution, as is equal to the number of defendants in the action." ;</p> <p>(2) in subsection (2) of that section by the substitution for the words " sum mentioned in the plaint", of the words " sum prayed for in the plaint";</p> <p>(3) in subsection (3) of that section, by the substitution for the words "from the defendant's residence the court.", of the words " from the defendants residence to the court, and no further time shall be given to the defendant by court thereafter for appearing and showing cause against such decree nisi.";</p> <p>(4) by the repeal of subsection (4) of that section and the substitution therefor of the following subsection</p> <p style="padding-left: 40px;">" (4) The affidavit to be filed by the institution under subsection (1) shall be made by a principal officer of such institution having personal knowledge of the facts of the cause of action and such person shall in his affidavit swear or affirm that he deposit 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 the judge ";</p> <p>(5) by the repeal of subsection (5) of that section ;and</p> <p>(6) by the substitution for the marginal note to that section of the following marginal note : " "Copies of instrument, agreement or document sued on to be filed."</p> |
| Replacement of section 5 of the principal enactment. | <p>4. Section 5 of the principal enactment is hereby repealed and the following section is substituted therefor :".</p> <p>" Service of 5. decree nisi ordinarily to be by registered post.</p> <p>(1) The decree nisi shall subject to the provisions of section 5B, be ordinarily served on the defendant by registered post at the address given by the defendant to the institution as the address to which process may be served on him.</p> <p>(2)</p> <p style="padding-left: 40px;">(a) Where the defendant is a public officer, the court may at its discretion, in addition to sending the decree nisi to the defendant by registered post, also forward a copy of the decree nisi, in duplicate, by registered post to the head of the department in which the defendant is employed, and it shall be the duty of such head of department to cause a copy of the decree nisi to be served personally on the defendant, and to return the others copy of the decree nisi to the court forthwith, with either an acknowledgement of receipt of the decree nisi by the defendant or with a statement of service of the decree nisi endorsed thereon and signed by the person effecting the service and countersigned by the head of the department if the head of the department has not</p> |

himself effected the service.

(3) Where the defendant is not a public officer and is in the employment of another person, the court may at its discretion, in addition to sending the decree nisi by registered post to the defendant also forward a copy of the decree nisi in duplicate to the employer of the defendant at his usual place of business or, where the employer is a company or corporation, to any secretary, manager or other like officer of the company or corporation, and it shall be the duty of such employer or officer, as the case may be, to cause a copy of the decree nisi to be served personally on the defendant and to return the other copy of the decree nisi to the court forthwith, with either an acknowledgement of receipt of such decree nisi by the defendant or with a statement of service of the decree nisi endorsed thereon and signed by the person effecting the service and counter signed by the employer of the defendant if such employer has not himself effected the service.

(4) In this section " head of department "

(a) when used with reference to a member of any unit of the Sri Lanka Army, Navy or Air Force, means the Commanding Officer of that unit ;

(b) when used with reference to a person employed in a Provincial Council means the Secretary of that Provincial Council ;

(c) when used with reference to a person. employed in Provincial Public Service means the head of the department in which such person, is employed;

(d) when used with reference to a person employed in a local authority, if the local authority is a Municipal Council means the Municipal Commissioner of the Council; and if the local authority is an Urban Council or a Pradeshiya Sabha, means the Chairman of that Council or Sabha;

(e) when used with reference to any other public officer, means the head of the Department of Government in which such person is employed.

Insertion of new Sections 5A, 5B and 5C in the principal enactment .

5. The following new sections are hereby inserted immediately after section 5 and shall have effect as sections 5A,5B,5C, of principal.

Proof of the service of decree nisi .

(1) Where a decree nisi is served by registered post on any defendant under subsection (1) of section 5 the Advice of Delivery of the registered letter in which the decree is sent, shall be sufficient proof of the service of such decree nisi on the defendant

(2) Where a decree nisi is served by defendant under subsection (2) or (3) section 5, an acknowledgement of the receipt of the decree nisi by the defendant or a statement of the service endorsed on the duplicate of the decree nisi shall be sufficient proof of the service of such decree nisi on the defendant.

(3) Where the court is satisfied that decree nisi has been sent to the defendant by registered post but no advice of delivery has been obtained in respect thereof, it shall authorise the Fiscal or any other officer authorized by court in that behalf to affix the decree nisi to some conspicuous part of the house in which the defendant ordinarily resides or in the case of a company or corporation to the usual place of business or office of such company or corporation and in such case the decree nisi shall be deemed to have been duly served on the defendant.

(4) Where the court is satisfied that decree nisi has been sent to the defendant by registered post under subsection (2) or (3) of section 5 but no acknowledgment of receipt by the defendant or statement of service on the defendant has been received in respect thereof it shall authorise the Fiscal or other officer authorized by court in that behalf to affix the decree nisi to some conspicuous part of the house in which the defendant ordinarily resides, and in such case, the decree nisi shall be deemed to have been duly served on the defendant.

Decree nisi may be served through a process officer .

(1) The court may, on application being made to that behalf immediately after decree nisi is entered, and in its discretion, order that in lieu of serving the decree nisi by registered post, the decree nisi be served by tendering or delivering the same on the defendant personally through a process officer.

(2) If the service referred to in subsection (1) cannot by the exercise of due diligence be effected, the process officer shall affix the decree nisi to some conspicuous part of the house in which the defendant ordinarily resides or in the case of a corporation or company, to the usual place of business or office of such corporation or company, and in every such case the decree nisi shall be deemed to have been duly served on the defendant.

(3) It shall be the duty of the process officer, on decree nisi being

served on the defendant or any other person on his behalf, to require the signature or the thumb impression or both of such defendant or person to be made to an acknowledgement of the service of the decree nisi, on the original.

(4) The process officer shall return the precept to court setting out in detail the manner, the person, place and other particulars relating to the identity of the person on whom, the date on which, and the time at which, the decree nisi was served and also state in the report, whether the person on whom it was served placed his signature or thumb impression or both, or refused to place the signature or thumb impression or both, on the original, in acknowledgement of such service.

(5) Refusal to place the signature or thumb impression or both, as the case may be, on the original shall not invalidate the service of the decree nisi.

(6) For the purpose of this section"

"process officer " means the Fiscal Official of the court of Fiscal of a court of like jurisdiction within the local limits of whose jurisdiction the decree nisi is served or any officer specially authorised in exceptional circumstances by court to serve the decree. nisi or any process officer of a court or Grama Niladhari or a private process server ;

"private process server" means a person employed by an Attorney-at-law or any institution, and who is registered as a private process server by the Fiscal under any written law.

Manner of service where officer. 5C. Where a decree nisi is ordered to be served personally through a process officer, such decree nisi may be served in any part of Sri Lanka provided that where a decree nisi is required to be served outside the local limits of the jurisdiction of the court issuing the same, the decree nisi shall be forwarded by such court to the court within whose jurisdiction the defendant is believed to be residing, and it shall be the duty of the last mentioned court to cause the decree nisi to be duly served on the defendant in accordance with the provisions of this Act.

Amendment of section 6 of the principal enactment.

6. Section 6 of the principal enactment is hereby amended as follows:"

(1) by the repeal of subsection (2) of that section and the substitution thereof of the following subsection ;

" (2) The court shall upon the filing by the defendant of an application for leave to appear and show cause supported by affidavit which shall deal specifically with the plaintiff claim and state clearly and concisely what the defence to the claim is and what facts are relied upon to support it, and after giving the defendant an opportunity of being heard, grant 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 the court being satisfied on the contents of the affidavit filed, that they disclose a defence which is prima facie sustainable and on such terms as to security, framing and recording of issues, or otherwise as the court thinks fit" ;

(2) by the repeal of subsection (3) of that section and the substitution thereof of the following subsection ;"

" (3) Where the defendant either falls to appear and show cause or having appeared, his application to show cause is refused, the court shall make the decree nisi absolute. For this 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 :

Provided that a decree nisi, if it consists of separate parts, may be discharged in part and made absolute in part and nothing herein enacted shall prevent my order being made by consent of the plaintiff and the defendant on the footing of the decree nisi"

Insertion of new section 6A in the principal enactment.

7. The following section is hereby inserted immediately after section 6 of the principal enactment and shall have new section effect as section 6A of that enactment : "

" Order 6A.

making decree nisi absolute not appealable but may be set aside.

(1) No appeal by a defendant shall lie against the decree nisi which has been made absolute under subsection (3) of section 6, on the ground of the defendant's non appearance, but it shall be competent to the court within a reasonable time after the decree absolute was entered, to entertain an application by way of summary procedure instituted by any defendant against such order absolute was entered, to have it set aside on the ground that, the applicant was prevented from appearing the decree nisi was

		<p>served on him by reason of accident or misfortune, or that such decree nisi was not served on him.</p> <p>(2) Where the ground on which an application is made under subsection (1) is duly established to the satisfaction, of as against the plaintiff, the court may set aside the decree absolute upon such terms and conditions as the court shall consider it just and right to impose upon the applicant and upon the decree absolute being so set aside, the court shall proceed with the hearing and determination of the matter in accordance with the provisions of this Act.</p> <p>(3) Where an application by way of summary procedure is instituted by any defendant under subsection (1) of this section the provisions of the Civil Procedure Code (Chapter 101) relating to the applications by way of summary procedure shall apply in respect of such application."</p>
Amendment of section 7 of the principal enactment.	8. Section 7 of the principal enactment hereby amended by the substitution for the, words and figures "sections 384,385,386,387,388,390 and 391" of the words and figures "sections 394, 385, 386, 387, 390 and. 391"	
Replacement of section 8 of the principal enactment.	9. Section 8 of the principal enactment is hereby repealed and the following section is substituted therefor:" "Court may order originals of documents filed to be made available for examination.	<p>8. In any proceedings under this Act, the court may order that the Original of the instrument, agreement or other document copies of which were filed with the plaintiff or on which the action is founded be made available for examination by the court when the action is supported by such instrument, agreement or document, thereafter, notwithstanding anything to the contrary in the Civil Procedure Code (Chapter 103) shall be returned to the plaintiff after such examination."</p>
Replacement of section 11 of the principal enactment.	10. Section 11 of the principal enactment is hereby repealed and the following section is substituted therefor : " Award of 11. compensation.	<p>(1) Where it appears to the Court that a decree nisi entered in an action instituted under this Act was obtained by wilful suppression or non-disclosure of any relevant facts or, if after the entering of the decree nisi, the decree nisi is discharged and the action is dismissed, the court may in the same action, on the application 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 subsection shall bar any action for compensation in respect of the entering of the decree nisi.</p> <p>(2) Notwithstanding the dismissal of any action instituted under this Act where an application is made for compensation under subsection (1) in respect of a decree nisi entered in such action, the action so dismissed shall be deemed to continue until the determination of such application".</p>
Replacement of section 12 of the principal enactment	11. Section 12 of the principal enactment repealed and the following section is substituted therefor:- " Adjustment of action. "	<p>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 shall with the approval of both parties to the action, minute the fact on the record and thereafter make the decree absolute. Such settlement shall operate as a stay of execution of proceeding unless the defendant acts in breach of any of the terms of settlement, in which event the institution Shall be entitled to execute the decree".</p>
Replacement of section 13 of the principal enactment.	12. Section 13 of the principal enactment is hereby repealed and the following section is substituted therefor:- Decree absolute deemed to be a writ. 13.	<p>(1) Subject to order 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 225(3) of the Civil Procedure Code (Chapter 101), and notwithstanding anything to the contrary in any other written law, the execution of the same shall not be stayed.</p> <p>(2) The writ of execution referred to in subsection (1) shall be valid for a period of three years from the date on which the decree nisi was made absolute, and it shall be the duty of the Fiscal to execute the same in the manner prescribed in the Civil Procedure Code (Chapter 101) for the execution of writs."</p>
Amendment of section 14 of the principal enactment	13. Section. 14 of the principal enactment is hereby amended as follows :"	<p>(1) in subsection (1) of that section by the substitution for the words " the Fiscal shall report such resistance " of the words " the Fiscal shall within fourteen days of the execution report such resistance ";</p> <p>(2) In subsection (2) of that section by the substitution for the words and figures</p>

Amendment of section 15 of the principal enactment.

"liable to the penalties prescribed for contempt of court by the Judicature Act No. 2 of 1978 and the Civil Procedure Code (Chapter 101) "of the words "liable to a fine not exceeding two thousand five hundred rupees or to imprisonment for a term not exceeding two years".

14. Section 15 of the principal enactment is hereby amended as follows:"

(1) by repeal of subsection (2) of that section and the substitution therefor of the following subsection:-

"(2) Subject to the provisions of subsection (2A), a defendant in an action instituted under this Act or his representative in interest shall not alienate any movable or immovable property or otherwise dispose of the same in any manner whatsoever after the decree nisi entered in such action is served on such defendant.";

(2) by the insertion immediately after subsection (2) of that section, of the following new subsections"

"(2A) It shall not be a contravention of the provisions of subsection (2) for a defendant to alienate any movable or immovable property or otherwise dispose of the same in any manner whatsoever after the service of the decree nisi on him where"

(a) the defendant has paid into court, the sum mentioned in the decree nisi; or

(b) the action on which the decree nisi is entered is dismissed, or the decree nisi is discharged;

(c) 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

(d) the alienation is undertaken with the approval of the court and subject to such terms and conditions as may be imposed by court.

(2B) Where any property is alienated or otherwise disposed of in contravention of the preceding

(a) such alienation shall be null and void and of no force or effect in law and shall be open to seizure in whosever's hands such property may be:

Provided that where the property alienated is in the hands of an alliance who has come by such property in good faith for consideration without having notice of the decree nisi either at the time the purchase money was paid or when the conveyance was executed or is in the hands of an alliance from such an alliance, such alienation shall not be null and void and the property shall not be open to seizure; and

(b) the person who alienated the property shall be guilty of an offence and shall on conviction after summary trial by a Magistrate be liable to a fine not less than fifty thousand rupee or to a term of imprisonment of not less than two years.

(2C) The provisions of section 303 of the Code of Criminal Procedure Act, No. 15 of 1979, shall not be applicable in respect of an offender on whom a sentence of imprisonment is imposed under subsection (2B) " ; and

(3) by the substitution, in subsection (6) of that section, for the words " Nothing in subsection (2)" of the words " Nothing in subsection (2B) " .

Replacement of section 16 of the principal enactment.

15. Section 16 of the principal enactment is hereby repealed and the following section substituted therefor:-

"Proceedings 16. Notwithstanding anything to the contrary in any other law, where leave to in the original appeal is granted on an application made in respect of an order made in the court not to course any action instituted under this Act, proceedings in the original court be stayed shall not be stayed unless the Court of Appeal otherwise directs and where the where leave Court of Appeal so directs, it shall call upon the appellant, if such appellant to appeal is granted. had been granted leave by the original court to appear and show cause, under paragraph (c) of subsection (2) of section 6, 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 may deem fit in all the circumstances of the case, in the event of the appeal being dismissed."

Replacement of section 17 of the principal enactment.

16. Section 17 of the principal enactment is hereby repealed and the following section substituted therefor : -

" Decree 17.

cluttered by Court of Appeal to be a writ of execution.

(1) where the Court of Appeal allows and appeal preferred to it against an order made under subsection (3) of section 6 making a decree nisi absolute and where the writ has been executed under section 13 of this Act, the Court of Appeal shall enter decree in favour of the appellant awarding damages in such sum as it may consider appropriate.

(2) The decree entered by the Court of Appeal under subsection (1) shall be deemed to be a writ of execution duly issued to the Fiscal in terms of subsection (3) of section 225 of the Civil Procedure Code (Chapter 101) but the execution of the same shall

be stayed"

(a) where no application for leave to appeal to the Supreme Court is made to the Court of Appeal or no application for special leave to appeal to the Supreme Court is made to the Supreme Court, from the decision of the Court of Appeal, until the expiration of the period within which such application may be made to the Court of Appeal or the Supreme Court, as the case may be ;
 (b) where the Court of Appeal grants leave to appeal to the Supreme Court or the Supreme Court grants special leave to appeal to the Supreme Court, from the decision of the Court of Appeal, until the determination by the Supreme Court of such appeal.

(3) Where leave to appeal to the Supreme Court against a decree absolute is granted by the Court of Appeal, the appellant shall be required to furnish security in cash or by a guarantee from a banker for the full amount of the decreed sum or such part thereof as the court deem fit in all the circumstances of the case.

(4) Where the Supreme Court allows the appeal preferred to it under paragraph (a) or (b) of subsection (1) the decree entered by the Supreme Court shall notwithstanding the preceeding provisions be deemed to be a writ of execution duly issued to the Fiscal in terms of subsection (3) of section 225 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 Code (Chapter 101) for the execution of writs."

Repeal of section 18 of the principal enactment.

17. Section 18 of the principal enactment is hereby repealed.

Replacement of section 21 of the principal enactment.

18. Section 21 of the principal enactment is hereby repealed and the following section is substituted there for:"

"Recovery of 21. Notwithstanding anything to the contrary in this Act or any other law, an interest in institution may recover as interest in an action instituted under this Act, a sum excess of of money in excess of the sum of money calculated as principal, in such action. principal due. "

Amendment of section 25 of the principal enactment.

19. Section 25 of the principal enactment is hereby amended In subsection (1) thereof as follows: "

(1) by the substitution for paragraphs (a) and (b) of that subsection of the following paragraphs; "

" (a) knowingly draws a cheque which is dishonoured by a bank for want of funds ; or

(b) gives 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 the order given being subsequently countermanded with a dishonest intention, or "; and

(2) by the substitution for paragraph (d) of that subsection of the following paragraph:" (d) having accepted an inland bill refuses payment dishonestly;"

Insertion of new section 25A of the principal enactment.

20. The following new section is hereby inserted immediately after section 25 of the principal enactment and shall have effect as section 25A of that enactment:"

"Offences by 25A. Where an offence under this Act is committed by a body of persons then" bodies

(a) if that body of persons is a body corporate, every director, manager or secretary of that body corporate ;

(b) if that body of persons is a firm every partner of that firm, and

(c) if that body of persons is an unincorporated body, every individual who is a member of such body.

shall be guilty of that offence:

Provided that a director or manager or secretary of such body corporate or a partner of such firm shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercises all due diligence to prevent the commission of such offence."

Amendment of section 30 of the principal enactment.

21. Section 30 of the principal enactment is hereby amended as follows; "

(1) by the insertion immediately before the definition of the word "debt" of the following new definition:-

" Advice of Delivery" means the Advice of Delivery issued under Rule 9 (b) of the Inland Postal (Registered and Insured Articles) Rules ; " ;

(2) by the substitution, for the definition of the word "debt" the following definition: "

"debt" means a sum of money which is ascertained or capable or 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 by any person or persons, jointly or severally or as principal "borrower or guarantor or in any other capacity, 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 sum of money owed under a promise or agreement which is not in writing ;;

(3) by the substitution for paragraph (f) of the definition of the expression "

lending institution " of the following paragraph: "

" (f) a company registered under the Finance Companies Act, No. 78 of 1988, to carry on finance business, and includes a liquidator appointed under the Companies Act, No. 17 of 1982 or any authority duly appointed, to carry on, or wind up, the business of any bank, corporation or company referred to above;".

Replacement of the First schedule to the principal enactment.

22. The First Schedule to the principal enactment is hereby repealed and the following Schedule is substituted therefor : "

*Debt Recovery (Special Provisions) (Amendment) 17
Act, No. 9 of 1994*

" FIRST SCHEDULE [Section 4 (2)]

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 form..... to and thereafter interest at the same rate from date hereof till payment in full together with costs of action.

These are therefore to command the Fiscal of the 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 for what sum or sums said 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

It is further ordered and these are to commend you, the aforesaid defendant to appear before this court on the day of 19.... at (time) and obtain leave from court and show cause, if any, why this decree Nisi should not be made absolute.

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

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

Sinhala text to prevail in case of inconsistency.

Sinhala text to prevail in case of inconsistency

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