

**PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**   
**SRI LANKA**

**CIVIL PROCEDURE CODE (AMENDMENT)**

**ACT, No. 29 OF 2023**

**[Certified on 17th of November, 2023]**

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| *Civil Procedure Code (Amendment)* | 1 |

*Act, No. 29 of 2023*

[Certified on 17th of November, 2023]

L.D.-O 63/2021

AN ACTTOAMENDTHE CIVIL PROCEDURE CODE (CHAPTER 101)

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

**1.** This Act may be cited as the Civil Procedure Code Short title

(Amendment) Act, No. 29 of 2023.

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| **2.** Section 5 of the Civil Procedure Code (Chapter 101) (hereinafter referred to as the “principal enactment”) is hereby amended by the insertion, immediately after the definition | Amendment of section 5 of  Chapter 101 |

of the expression “decree”, of the following new definitions:-

“ “document” includes a document in electronic form;

“document in electronic form” includes -

(*a*) any information consisting of any   
 contemporaneous recording or reproduction   
 thereof or any information contained in a   
 statement produced by a computer within the   
 meaning of the Evidence (Special Provisions)   
 Act, No. 14 of 1995;

(*b*) any information contained in a data message,   
 electronic document, electronic record,   
 electronic communication or other   
 information or transaction in electronic form   
 within the meaning of the Electronic   
 Transactions Act, No. 19 of 2006;

(*c*) such other document or information or record   
 or communication or transaction in electronic   
 form that may be specified by any other   
 written law;

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(*d*) such other document or information or   
 record or communication that is stored on   
 devices, servers and back-up systems in any   
 medium that encompasses computer   
 technology or any such document or   
 information or record or communication that   
 has been deleted; or

(*e*) any metadata and other embedded data   
 which is not typically visible on a computer   
 screen or print out;”.

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| Amendment  of section 18  of the  principal  enactment  Amendment  of section 22  of the | **3.** Section 18 of the principal enactment is hereby amended in subsection (1) thereof, by the substitution for the words “before the hearing,” of the words “before the day first fixed for the pre-trial conference,”.  **4.** Section 22 of the principal enactment is hereby amended as follows:- |

principal

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| enactment | (1) | by the substitution for the words “before the |

hearing.” of the words “before the day first fixed for   
pre-trial conference.”; and

(2) by the repeal of the marginal note thereof and   
 substitution therefor of the following marginal   
 note:-

“Objections for

non-joinder or

mis joinder to be

taken before the

day first fixed

for pre-trial

conference.”.

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| **5.** Chapter XA (section 79A) of the principal enactment is hereby repealed and the following Chapter is substituted therefor: - | Replacement  of Chapter  XA in the  principal |

enactment  
“CHAPTER XA

**FIXINGDAYOF PRE-TRIAL CONFERENCE**

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| Date for  pre-trial  conference  order | **79A.** The court shall-  (*a*) upon the filing of the answer; or |

(*b*) where a replication is permitted, on   
the last day of the period of time   
allowed for the filing of the

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| replication, | whether | such |

replication is filed or not,

appoint a date not less than three months and   
not exceeding five months from such date, for   
pre-trial conference to be commenced, either   
in the presence of all parties to the action or   
such parties as are present.”.

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| **6.** The following new Chapter is hereby inserted immediately after Chapter XA of the principal enactment and shall have effect as Chapter XB of that enactment: - | Insertion of  new Chapter  XB in the  principal |

enactment

“CHAPTER XB

**PRE-TRIALSTEPSTOBETAKENBEFORETHE**   
**PRE-TRIAL CONFERENCE**

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| Pre- trial  steps to be  taken before the date fixed for the  pre-trial  conference | **79B.** The parties shall, in addition to any other pre-trial step that may be taken by such parties before the case is fixed for pre-trial conference, tender -  (*a*) their proposed admissions and |

issues of fact and law in writing;

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(*b*) (i) lists of witnesses to be called   
by such parties at the trial; and

(ii) lists of documents relied upon   
by such parties and to be   
produced at the trial;

(*c*) copies of documents listed in the   
lists of documents which are in the   
possession of or under the control   
of such parties,

to the registry of the court, not less than thirty   
days before the date first fixed for the pre-trial   
conference and after giving notice to all other   
parties with proof of service thereof.

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| Tendering of  documents in  electronic  form | **79C.** (1) Notwithstanding anything to the contrary contained in the Evidence (Special Provisions) Act, No. 14 of 1995, Electronic Transactions Act, No. 19 of 2006 or any other |

written law, where any party proposes to tender   
any document in electronic form, the   
provisions of this section shall apply in relation   
to the tendering of such documents.

(2) Any party proposing to tender documents   
in electronic form shall, not less than thirty   
days before the date first fixed for pre-trial   
conference, file in court, after giving notice to   
the opposing party or parties –

(*a*) the list of such documents in   
 electronic form together with an index   
 thereof; and

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(*b*) a copy or copies of such documents   
 as is sufficient to enable the party to   
 understand the nature of such   
 evidence.

(3) Any party to whom a notice has been   
given under subsection (2) may, within fifteen   
days of the receipt of such notice apply for   
permission from the party giving such notice,   
to access and inspect -

(*a*) the documents in electronic form,   
 sought to be tendered in court under   
 subsection (2);

(*b*) the machine, device, computer or   
 information system, as the case may   
 be, used to produce, reproduce,   
 generate, create, send, receive, store,   
 display, communicate or process the   
 documents in electronic form referred   
 to in paragraph (*a*); and

(*c*) any records relating to the production,   
 reproduction, generation, creation,   
 sending, receipt, storage, display,   
 communication or processing of   
 the documents referred to in   
 paragraph (*a*).

(4) Upon receipt of an application for   
permission to access and inspection under   
subsection (3), the party proposing to tender   
such documents in electronic form shall, within   
reasonable time, but not later than fifteen days   
after the receipt ofsuch application, provide a

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reasonable opportunity to the party applying   
or his agents or nominees, to have access to,   
and inspect such documents in electronic form,   
machine, device, computer, information system   
or records referred to in the application.

(5) Where –

(*a*) the party proposing to tender   
 documents in electronic form is   
 unable to give permission or does not   
 give permission for access and   
 inspection as applied for under   
 subsection (3); or

(*b*) the parties are unable to agree on any   
 matter relating to -

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| (i) | the | notice | given | under |

subsection (2); or

(ii) an application for access and   
 inspection made under   
 subsection (3) or the manner and   
 extent of such access and   
 inspection,

the court may on application made by either   
party, make such order or give such   
direction, as the interest of the justice may   
require.

(6) The time period referred to in subsection   
(3) or (4) may be extended at the discretion of   
the court, based on the special circumstances   
of each case.

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(7) Where any party proposing to tender   
any document in electronic form under this   
section –

(*a*) fails to give notice under subsection   
 (2);

(*b*) upon application being made for   
 access and inspection under   
 subsection (3), fails to provide a   
 reasonable opportunity therefor; or

(*c*) fails to comply with any order or   
 direction given by court under   
 subsection (5),

such party shall not be permitted to tender such   
documents in electronic form, in respect of   
which the failure was occasioned:

Provided however, the steps or applications   
referred to in this Chapter shall be followed   
prior to the conclusion of the pre-trial   
conference.

(8) Where any party objects to the   
admissibility of any document in electronic   
form tendered under this section, such party   
shall file in court, objections with reasons   
therefor in writing with copies to all other   
parties, either before the pre trial conference or   
at the pre trial conference, as the case may be.

(9) Where any party files objections under   
subsection (8), the court shall hear the parties   
to ascertain whether the parties can admit such

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documents in electronic form, and where no   
such admission is recorded, the court shall   
make an appropriate pre-trial order under   
section 142B with regard to the admissibility   
of such documents at the pre-trial   
conference.”.

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| Replacement  of section 80  of the | **7.** Section 80 of the principal enactment is hereby repealed and the following section is substituted therefor: - |

principal   
enactment

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| ”Fixing the  case for trial | **80.** (1) After the issues are settled and the Judge conducting the pre-trial conference is |

satisfied that the case is ready for trial, the   
Judge shall forthwith appoint a date not later   
than fourteen days from the date of the   
conclusion of the pre-trial conference for the   
case to be called in order to fix a date for the   
trial,in the trialcourt.

(2) The trial shall be conducted by a   
Judge appointed for such purpose, other than   
the Judge who conducted the pre-trial   
conference:

Provided that, where a Judge has not been   
separately appointed to conduct the pre-trial   
conference, the Judge who has been appointed   
for such court shall conduct both pre-trial   
conference and the trial of such action.

(3) The Judge who is fixing the case for trial   
may, in any appropriate case, fix several dates   
for trial.”.

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| **8.** Section 80A of the principal enactment is hereby repealed. | Repeal of  section 80A  of the |

principal   
enactment

|  |  |
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| **9.** Section 93 of the principal enactment is hereby amended, as follows:- | Amendment  of section 93  of the |

principal

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| (1) | by the substitution, in subsection (1) thereof, for | enactment |

the words “first fixed for Pre-Trial of the action” of

the words “first fixed for pre-trial conference of the

action”; and

(2) by the substitution, in subsection (2) thereof, for

the words “first fixed for Pre-Trial of the action” of

the words “first fixed for pre-trial conference, of the

action”.

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| **10.** Section94 of the principal enactment is hereby amended, by the substitution, in subsection (1) thereof, for the words “Any party may at any time before hearing,” of the words “Any party may, fifteen days before the date first | Amendment  of section 94  of the  principal  enactment |

fixed for the pre-trial conference,”.

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| **11.** Section 101 of the principal enactment is hereby amended, by the substitution, in subsection (1) thereof, for the words “on motion *ex-parte* within a reasonable time not less than ten days before the hearing,” of the words “on | Amendment  of section  101 of the  principal  enactment |

motion *ex-parte* not less than fifteen days before the date

first fixed for the pre-trial conference,”.

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| **12.** Section 102 of the principal enactment is hereby amended, by the substitution, in subsection (1) thereof, for the words “party to the action may, at any time before the hearing,” of the words “parties to the action may, fifteen | Amendment  of section  102 of the  principal  enactment |

days before the date first fixed for the pre-trial conference”.

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| Amendment  of section  103 of the  principal  enactment | **13.** Section 103 of the principal enactment is hereby amended as follows:- | |
| (1) | by the re-numbering of that section as subsection |
| (1) thereof; | |
| (2) | by the substitution, in the re-numbered subsection |

(1) thereof, for the words “order the production by   
any party” and “when produced in such manner”,   
of the words “order the production or preservation   
by any party” and “when produced or preserved in   
such manner”, respectively;

(3) by the insertion, immediately after the re-numbered   
 subsection (1) thereof, of the following new   
 subsections:-

“(2)A party intending to institute any proceeding   
before court may, prior to the institution of such   
proceedings, make an application *ex parte*, by way   
of petition supported by an affidavit, for an order to   
be made requiring a person or entity having   
possession of any document in electronic form, who   
shall be made the respondent in such application,   
to preserve, disclose or produce such document, as   
may be specified in such order.

(3) The court may, upon the receipt of an   
application under subsection (2), make an order as   
prayed for in such application, if –

(*a*) the person or entity against whom an order   
 is sought is likely to be a party to the   
 proceeding to be instituted subsequently;

(*b*) the applicant is also likely to be a party to   
 such proceeding to be instituted   
 subsequently;

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(*c*) the document in electronic form sought to   
 be preserved, disclosed or produced is   
 relevant to the matter in dispute in respect   
 of which the proceedings are intended to   
 beinstituted and is in the possession or   
 control of such respondent;

(*d*) the duty to preserve, disclose or produce   
 any electronic document upon the receipt   
 of such order extends to the document in   
 electronic form of which the applicant   
 seeks preservation, disclosure or

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| production, | if | proceedings | had |

commenced against such person or entity;

(*e*) preservation, disclosure or production of   
 such document in electronic form is   
 desirable in order to –

(i) dispose the intended proceedings in   
 a fair manner;

(ii) assist the dispute to be resolved   
 without proceedings; or

(iii) save costs.

(4) Any person who or entity which receives an   
order made under subsection (3) shall have a duty   
to comply therewith and in the event of non-  
compliance, such person or entity shall be guilty of   
the offence of contempt of court.

(5) Any party to any proceeding pending before   
a court may, not less than forty-five days before the   
date first fixed for the pre-trial conference, make an

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application for an order to be made requiring any   
other party to such action to preserve, disclose or   
produce any relevant document in electronic form,   
as may be specified in such order.

(6) Any party making an application under   
subsection (5) of this section shall –

(*a*) describe with reasonable particularity each   
 item or category of items to be preserved   
 or disclosed or produced; and

(*b*) specify the manner of preservation,   
 disclosure or production and by whom   
 such preservation, disclosure or   
 production is to be performed.

(7) A party who receives an order made under   
subsection (5) shall have a duty to comply therewith   
and in the event of non-compliance, the court may–

(*a*) where the restoration of such document in   
 electronic form is possible, order for the   
 restoration of the same and award costs;

(*b*) where the restoration of the document in   
 electronic form is not possible and where   
 the court is of the opinion that prejudice   
 has been caused to the party making the   
 application, due to the loss of such   
 document and that non-complying party   
 has acted with the intention of depriving   
 the use of such document by the other   
 party-

(i) impose costs in a sum as may be   
 deemed reasonable by the court; or

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(ii) where the prejudice cause cannot be   
 cured by way of costs, in case of a   
 plaintiff, order to have his action   
 dismissed for want of prosecution,   
 and in case of a defendant, to have   
 his defence, if any, struck out, and   
 to be placed in the same position as   
 if he had not appeared and   
 answered.

(8) A party or person failing to comply with an   
order made under subsection (5) of this section shall   
not be entitled to produce any such document in   
electronic form in evidence on his behalf in such   
action, unless he satisfies the court that such   
electronic document relates only to his own title,   
or that he had some other sufficient cause for not   
complying with such order.

(9) A party to any proceeding may make an   
application *ex-parte* by way of a petition supported   
by an affidavit, not less than forty-five days before   
the date fixed for pre-trial conference, for an order   
to be made requiring any person or entity who is   
not a party to such proceeding, to preserve, disclose,   
or produce any document in electronic form in the   
possession or control of such person or entity. The   
person or entity against whom such order is sought   
shall only be made the respondent in such   
application.

(10) Upon receipt of an application under   
subsection (9), the court may make an order as   
prayed for in such application, if –

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(*a*) the document in electronic form of which   
 the preservation, disclosure or production   
 is sought is likely to support the case of   
 the applicant or adversely affect the case   
 of any party to such proceeding;

(*b*) preservation, disclosure or production is   
 necessary in order to disprove the claim in   
 a fair manner or to save costs.

(11) An order made under subsection (10) may-

(*a*) specify the documents in electronic form   
 which the respondent is required to   
 preserve, disclose or produce;

(*b*) if relevant, specify the time and place of   
 preservation, disclosure or production to   
 take place;

(*c*) specify the format or formats in which   
 document in electronic form is to be   
 produced; and

(*d*) require the respondent, when making   
 preservation or disclosure, to specify the   
 documents, if any, which are or not in his   
 control or possession with reasons therefor.

(12) Any person or entity who fails to comply   
with an order made under subsection (10), shall be   
guilty of the offence of contempt of court.

(13) Where a person, entity or party from whom   
preservation, disclosure or production of a   
document is sought under subsection (2), (5) or (9)

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objects to such preservation, disclosure or   
production from the source of such document for   
not being reasonably accessible due to the burden   
of cost, the court may limit the extent of such   
preservation, disclosure or production otherwise   
allowed under the said subsections where –

(*a*) the preservation, discovery or production   
 sought is unreasonably cumulative,   
 duplicative, disproportionate or excessive   
 to the material facts of the case;

(*b*) the requested document in electronic form   
 can be obtained from any other source   
 which is more convenient, less   
 burdensome or less expensive;

(*c*) the party seeking preservation, disclosure   
 or production has had ample opportunity   
 to obtain such document by discovery in   
 the action; or

(*d*) the requested document in electronic form   
 is irrelevant or not proportionate to the   
 issues in dispute or the party’s resources   
 or the burden of expense of the proposed   
 discovery outweighs the possible benefits   
 and importance in resolving the issues:

Provided however, the court may order   
preservation, disclosure or production from the   
sources of such document in electronic form, if the   
party making the application for preservation,   
disclosure or production is able to show good cause,   
subject to such limitations as may be imposed by   
the court.

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(14) Unless otherwise agreed or ordered,

electronic copies of the disclosed documents in

electronic form shall be produced –

(*a*) in their native format;

(*b*) in a manner which preserves metadata

relating to the date of creation of each

such document; and

(*c*) organised and labeled in a manner that

corresponds with the categories of such

documents as requested.”; and

(4) by the repeal of the marginal note thereof and the

substitution therefor of the following marginal

note:-

“Orders for   
preservation,   
disclosure or   
production of   
documents or   
documents in   
electronic   
form.”.

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| Amendment  of section  104 of the  principal  enactment | **14.** Section 104 of the principal enactment is hereby amended, by the substitution in subsection (1) thereof, for the words “party to an action may, at any time before or at the hearing thereof,” of the words “party to an action may, |

fifteen days before the date first fixed for the pre-trial

conference thereof,”.

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| Insertion of  new section  104A in the  principal | **15.** The following new section is hereby inserted immediately after section 104 of the principal enactment and shall have effect as section 104A of that enactment: - |

enactment

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| ”Protective  orders | **104A.** A party, person or an entity against whom the discovery, production or preservation |

of a document or document in electronic form   
is sought, may apply for a protective order to   
the court within which such action is pending.   
The court may, for good cause, make one or   
more of the following orders to protect any   
such document or the interests of a person,   
entity or party: -

(*a*) prohibiting the disclosure or   
 discovery;

(*b*) specifying terms, including the time,   
 place, forms and manner of the   
 disclosure or discovery;

(*c*) prescribing a discovery method   
 other than the one selected by the   
 party seeking discovery;

(*d*) prohibiting inquiry into certain   
 matters or limiting the scope of   
 disclosures or discovery to other   
 matters;

(*e*) designating persons or experts who   
 may be present while the discovery   
 is conducted;

(*f*) appointing persons or experts who   
 shall conduct the disclosure,   
 discovery, preservation,   
 inspections, keep custody,   
 examination, analysis, reporting   
 and presenting them in court;

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(*g*) directing that a confidential   
 research, development or trade   
 secret or undisclosed or confidential   
 information of commercial nature   
 not to be disclosed or disclosed   
 only in a specified manner; or

(*h*) directing that a document in   
 relation to undisclosed confidential   
 research, development or trade   
 secret or undisclosed or confidential   
 information of commercial nature   
 not to be disclosed or disclosed   
 only in a specified manner.”.

|  |  |
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| Amendment  of section  109 of the  principal  enactment | **16.** Section 109 of the principal enactment is hereby amended, by the substitution, in subsection (1) thereof, for the words “interrogatories, or for discovery, production, or inspection, which” of the words “interrogatories, or for |

discovery, production, inspection, preservation or protection, which”.

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| Replacement  of section  117 of the | **17.** Section 117 of the principal enactment is hereby repealed and the following section is substituted therefor:- |

principal

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| enactment  Amendment  of section  121 of the | “Provisions as | **117.** The provisions of this Chapter as to |
| to documents apply to other material | documents shall, *mutatis mutandis,* apply to all other material objects producible as |
| objects and  documents in electronic  form | evidence and to all documents in electronic form, to the extent not inconsistent with the provisions of this Chapter.”. |
| **18.** Section 121 of the principal enactment is hereby amended, by the repeal of subsection (2) thereof. | |

principal   
enactment

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| **19.** Chapter XVIIA (sections 142A, 142B, 142C, 142D, 142E, 142F, 142G, 142H and 142I) of the principal enactment is hereby repealed and the following Chapter is substituted therefor: - | Replacement of Chapter  XVIIA of the principal  enactment |

“CHAPTER XVIIA

**PRE -TRIALCONFERENCEANDPRE-TRIALORDERS**

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| Pre-trial  conference | **142A.** (1) The court shall conduct a pre-trial conference with the Attorneys-at-law |

representing the parties and the parties not so   
represented, for the following purposes :-

(*a*) to facilitate a settlement between the   
 parties as specified in subsection (2),   
 ensuring that the matters not so   
 settled shall only be fixed for trial;

(*b*) to expedite the disposition of the   
 action through judicial case   
 management;

(*c*) improving the quality of the trial   
 through prior preparation and case   
 management orders so that the action   
 will not be protracted due to lack of   
 trial management;

(*d*) to identify the key issues at an early   
 stage, in order to discourage   
 unnecessary pre-trial applications;

(*e*) to facilitate the discovery of   
 evidence;

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(*f*) to identify the witnesses and   
 documents and avoid unnecessary   
 production of evidence at the trial;   
 and

(*g*) to fix strict time limits for pre-trial   
 orders and enforcement thereof.

(2) (*a*) The Judge shall, at the pre-trial   
conference, make every effort to persuade the   
parties to arrive at a settlement of the dispute   
and where the parties agree for a settlement,   
such settlement shall be recorded and signed   
by the parties and an order shall be made in   
accordance with the terms of such settlement.

(*b*) The Judge in an appropriate case, may   
direct the parties to appear either in person or   
in the case of a party being a legal person, an   
authorized representative thereof to be present   
at the pre-trial conference in order to facilitate   
a settlement, adjustment, compromise or other   
agreements.

(3) The judge at the pre-trial conference may   
determine unresolved jurisdictional and legal   
issues.

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| Pre-trial  orders | **142B.** Subject to the provisions of section 104A, the Judge shall, at the pre-trial |

conference, discuss with the parties, and make   
appropriate pre-trial orders on the following   
matters: -

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| (*a*) | identifying | and | obtaining |

admissions of facts or documents;

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(*b*) identifying the number of witnesses   
 to be called at the trial based on the   
 relevancy and admissibility to the   
 case and dispensing with calling of   
 unnecessary witnesses;

(*c*) identifying the documents to be   
 produced at the trial based on the   
 relevancy, admissibility, to the case   
 and authenticity of documents and   
 in appropriate instances dispense   
 with proof of such documents;

(*d*) with regard to the discovery,   
 inspection, protection, preservation   
 and production of documents and

|  |  |  |
| --- | --- | --- |
| tangible | things | including |

specification of terms, time, place,   
manner and form in which such   
documents and tangible things to be   
discovered, protected, preserved and

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| produced | in | court | and |

authentication of documents and   
signatures;

(*e*) the protection of trade secrets, other   
 confidential research information   
 and undisclosed commercial   
 information subject to privileges and   
 limitations;

(*f*) issuing of certified copies of   
 documents in the custody of any   
 public office, public corporation,   
 provincial council, local authority,

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| bank, | body | incorporate | or |

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unincorporate, partnership, hospital,

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| medical | institute, | court, |

tribunal or any such similar   
institution:

Provided that, the provisions of   
this paragraph shall not prejudice the   
right of the State to withhold any   
document on the ground that in the   
opinion of the Minister assigned in   
terms of Article 44 or 45 of the   
Constitution the subject to which   
the document relates, the public   
interest would suffer by such   
disclosure;

(*g*) upon the agreement of the parties,   
 issuing of commissions to a single,   
 joint or court appointed independent   
 experts to inquire and report on any   
 question of fact and express an   
 opinion thereof:

Provided that, any application   
for the issue of a commission for   
local investigation as referred to in   
Chapter XXIX shall be made prior   
to the day first fixed for the pre-trial   
conference:

Provided further, that the court   
may, in its discretion, issue a

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| commission | for | such | local |

investigation after the day first fixed   
for pre-trial conference if it is   
satisfied, for reasons to be recorded   
and subject to terms as to costs or   
otherwise, that a commission is

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necessary for the determination of   
the matters in dispute or settlement   
of the dispute between the parties;

(*h*) recording of any agreement of   
 parties with regard to any matter,   
 including any issues of facts or law,   
 mode of proof of any fact or   
 document or the number of witnesses   
 to be called or number of documents   
 to be produced at the trial, and   
 entering of orders or judgment in   
 accordance with such agreement of   
 parties:

Provided that, the court shall   
read out and explain the effect of   
such agreement to the parties   
concerned and record the fact that   
the parties understand the contents   
of such agreement and the effect   
thereof and the parties shall sign the   
agreement or the case record where   
such agreement is recorded orally in   
open court;

(*i*) consolidating two or more actions,   
 subject to the provisions of section   
 149A;

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| (*j*) | withdrawal of actions; | | | | or |
| (*k*) | the | use | of | technology |

employing a special interpreter at   
the trial;

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(*l*) identifying the number of trial dates   
 or period within which a trial may   
 be concluded and how the time   
 available for the trial will be used;   
 or

(*m*) any other step as may be necessary   
 or desirable for the just and   
 expeditious disposal of the action.

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| Parties to be  ready with  original  documents | **142C.** The parties or their registered attorneys shall, at the pre-trial conference, bring with them and have in readiness at the pre-trial conference, original or certified copies |

of all documents specified in the list of   
documents and tendered to the registry of the   
court under section 79B.

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| Permission of  court to call  additional  witnesses and  additional  documents  identified or  discovered at  pre-trial  conference | **142D.** (1) The court shall, at the pre-trial conference, on application of any party, grant permission to such party, to call any witness or produce any document at the trial, if such witness or document is identified at such conference to be relevant to the matters in dispute, notwithstanding such witness or document not being included in the list of |

witnesses or documents filed under paragraph   
(*b*) of section 79B:

Provided that, the pre-trial Judge may   
award costs against the party seeking to tender   
documents or summon witnesses which had   
not been included in the list filed under   
paragraph (*b*) of section 79B unless such party   
can adduce sufficient reasons for the failure to   
include such documents or witnesses in the   
said list.

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(2) The court may, at its discretion, grant   
permission at the pre- trial conference, to any   
party to produce any document at the trial and   
call any witness in proof thereof, if such   
document is discovered under Chapter XVI   
relevant to the matters in dispute.

(3) Where the court grants permission to call   
any additional witness or document under   
subsection (1) or (2), the court shall, at the pre-  
trial conference, record the fact that such party   
is entitled to call such witness or produce such   
document at the trial and no further list of   
witnesses or documents is required to be filed   
thereafter.

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| Pre-trial steps not to be  allowed after fixing the  date of trial | **142E.** Subject to the provisions of this Act, any application for pre-trial steps shall notbe allowed after the conclusion of the pre-trial conference of an action unless the court is |

satisfied for reasons to be recorded and subject   
to costs that a grave and irremediable injustice   
would be caused if such steps are not permitted   
and the party applying for such steps is not   
guilty of laches.

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| Determination of issues | **142F.** (1) Where the judge is satisfied that all the pre-trial steps have been taken, the Judge |

shall determine the issues, taking into   
consideration the pleadings, proposed   
admissions and issues of the parties,   
interrogatories, documents, agreement of the   
parties and reports if any, submitted to court   
during the pre-trial conference.

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(2) Where issues both of law and facts arise   
in the same action, and the court is of the   
opinion that the case may be disposed of on   
the issues of law only, the court shall try such   
issues first and for that purpose the court may,   
if it thinks fit, postpone the settlement of the   
issues of fact until after the issues of law have   
been determined.

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| Advancement  or  postponement  of pre-trial | **142G.** The Judge conducting the pre-trial conference may, either on his own motion or on the application of any party and for sufficient cause shown, advance or postpone |

the date fixed for the pre-trial conference:

Provided that, the Judge conducting the   
pre- trial conference shall conclude the hearing   
within four months from the commencement   
of such conference, unless the Judge is   
prevented from acting accordingly for reasons   
which shall be recorded, including delays in   
adducing evidence or discoveries.

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| Default of  parties | **142H.** Where any party- | |
| (*a*) | fails to diligently take steps |

according to the provisions of   
Chapters XB and this Chapter or   
diligently prosecute or defend the   
case during the pre- trial conference   
or fails to comply with any pre-trial   
order without any reasonable   
ground; or

(*b*) fails to appear without sufficient   
 cause on the day fixed for the pre-  
 trial conference or on any other day   
 to which it is adjourned,

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the Judge conducting the pre-trial conference   
may, taking into consideration all appropriate   
circumstances -

(i) subject to the payment of costs or   
 pre-payment of costs, make such   
 appropriate order as he may think   
 fit, including, directing such party   
 to comply with the requirement   
 which was not complied with, unless

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| such | non-compliance | was |

substantially justified;

(ii) continue further proceedings   
 notwithstanding such default was   
 made by any party who has obtained   
 any pre- trial order, disregarding any   
 such pre- trial order and upon such   
 terms as to costs being awarded   
 against such defaulting party; or

(iii) proceed to dispose of the action in   
 one of the methods specified in   
 Chapter XII:

Provided that, the Judge shall make every   
endeavor to make orders in terms of paragraph   
(i) or (ii), prior to an order being made under   
paragraph (iii), unless a party is absent and   
unrepresented at the pre-trial conference.”.

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| **20.** Section 175 of the principal enactment is hereby amended as follows :- | Amendment  of section  175 of the |

principal   
enactment

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(1) by the substitution in subsection (1) thereof, for the   
 words “as provided by section 121:” of the words  
 “as provided by subparagraph (i) of paragraph (*b*)   
 of section 79B or permitted by court under section   
 142D:”

(2) by the substitution, in subsection (2) thereof, for   
 the words “as provided by section 121 and which is   
 not so included” of the words “as provided by   
 subparagraph (ii) of paragraph (*b*) of section 79B   
 and which is not so included or not permitted by   
 court under section 142D”; and

(3) by the insertion, immediately after subsection (2)   
 thereof, of the following subsection: -

“(3) Where an order is made under this section,   
the court shall take into consideration any order   
made under section 142B.”.

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| Transitional  provisions | **21.** Notwithstanding the repeal of Chapter XA (section 79A), Chapter XVIIA (sections 142A, 142B, 142C, 142D, 142E, |

142F, 142G, 142H, and 142I) and section 80A of the principal enactment (in this section referred to as the “repealed provisions”), all actions and matters filed in the District court and pending on the day immediately preceding the date of commencement of this Act, in respect of which –

(*a*) a date for pre-trial hearing has already been fixed;   
 or

(*b*) any pre-trial step has already been taken under the   
 repealed Chapter XVIIA,

shall be dealt with under the repealed provisions.

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| Sinhala text  to prevail in  case of | **22.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail. |

inconsistency

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