

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

*————————*

**RECOVERY OF POSSESSION OF PREMISES GIVEN ON LEASE**

**A**

**BILL**

**to provide for the procedure relating to the recovery of possession of premises given on lease under a lease agreement and to regulate the recovery of arrears of lease rentals, service charges and liquidated damages and to provide for matters connected therewith or incidental thereto**

*————————*

*Presented by the Minister of Justice, Prison Affairs and Constitutional Reforms on 19th of November, 2022*

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| **[Bill No. 162]** | *————————* |

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| *Recovery of Possession of Premises* | 1 |

*Given on Lease*

L.D.-O. 66/2021

AN ACTTOPROVIDEFORTHEPROCEDURERELATINGTOTHERECOVERYOF POSSESSIONOFPREMISESGIVENONLEASEUNDERALEASEAGREEMENT; TOREGULATETHERECOVERYOFARREARSOFLEASERENTALS, SERVICE CHARGESANDLIQUIDATEDDAMAGES; ANDTOPROVIDEFORMATTERS CONNECTEDTHEREWITHORINCIDENTALTHERETO.

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

**1.** This Act may be cited as the Recovery of Possession Short title of Premises Given on Lease Act, No. of 2022.

5 PART I

INSTITUTIONOF ACTION

|  |  |  |  |
| --- | --- | --- | --- |
| 10 | **2**. (1) Where any premises has been given on lease by a | | Action by the |
| lessor to |
| lessor, such lessor may, subject to the provisions of | |
| recover |
| subsection (2), institute action for the recovery of possession | |
| possession of |
| of such premises in the Court having jurisdiction over the | |
| a premises |
| local limitswithin which- | | given on |
| lease |
| (*a*) | the premises given on lease is situated; |
| (*b*) | the lessee resides; |
| 15 |
| (*c*) | the cause of action arises; or |
| (*d*) | the lease agreement sought to be enforced was |

made.

(2) An action shall not be instituted by a lessor under the provisions of this Act for the recovery of possession of a premises given on lease or for any relief specified in 20 subsection (2) of section5 unless possession of such premises has been given to the lessee by a lease agreement.

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|  |  |
| --- | --- |
| **3**. An action under this Act may be instituted by the lessor to recover the possession of the premises given on lease where the lessee refuses or fails or neglects to leave the | Grounds for institution of action |

premises -

|  |  |  |
| --- | --- | --- |
| 5 | (*a*) | at the expiry of the period of the lease agreement; or |
| (*b*) | upon the termination of the lease agreement prior |

to the expiry of the period of the lease agreement   
due to a breach by the lessee of any of the terms,   
conditions, covenants, obligations or duties set out

|  |  |  |
| --- | --- | --- |
| 10 | in thesaid agreement, where the lessor has issued a | Documents |
| notice of termination of the lease agreement. |
| **4.** (1) The lessor (hereinafter referred to as the “plaintiff”) |
| to be filed |
| shall institute an action by presenting a plaint in the form |

specified in the Civil Procedure Code and shall file with 15 such plaint-

(*a*) an affidavit to the effect that the possession of the   
 premisesgiven on lease which is the subject matter   
 of the action (hereinafter referred to as the  
 “premises”)is lawfully due to the plaintiff from the

|  |  |  |
| --- | --- | --- |
| 20 | (*b*) | lessee (hereinafter referred to as the “defendant”); |
| a draft decree *nisi* together with the applicable |

stamps asrequired by law, for the decree *nisi* and   
service thereof; and

|  |  |  |
| --- | --- | --- |
| 25 | (*c*) | such number of copies of the plaint, affidavit and |
| lease agreement, together with any document relied |

on by the lessor, as is equal to the number of   
defendants in the action, if there are more than one   
defendant.

(2) (*a*) The affidavit to be filed by the plaintiff under

|  |  |
| --- | --- |
| 30 | subsection (1) shall be made by the plaintiff himself or by a person duly authorized by law to make such affidavit on |

behalf of the plaintiff.

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(*b*) If the action is instituted by the plaintiff on the ground referred to in paragraph (*b*) ofsection 3**,** the plaintiff shall plead such facts and *prima facie* establish the breach committed by the defendant and shall also adduce proof of 5 the early termination.

(3) In any action institutedunder subsection (1), the Court shall permit the plaintiff to support the same within seven days from the institutionof the action for issuance of a decree *nisi.*

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| 10 | **5.** (1) When the action is supported in Court for the | | | Entering a |
| issuance of a decree *nisi* in terms of section 4*,* if it appears to | | | decree *nisi* |
| by the Court |
| the Court that – | | |
| (*a*) | the lease agreement produced – | |
| 15 |
| (i) | | is properly executed and duly stamped as |
| required by law; and | | |
| (ii) | | is not open to suspicion by reason of any |

alteration, erasure or interpolation in the lease   
agreement unless such alteration, erasure or   
interpolation has been made before the signing

|  |  |
| --- | --- |
| 20 | by the executing parties as stated in the attestation by notary public, as the case may |

be; and

(*b*) the contents of the affidavit filed is satisfactory to   
 prove, *prima facie*, the case on the part of the

25 plaintiff,

the Court shallenter a decree *nisi* in the form set out in the First Schedule to recover the possession of the premises described in the plaint, together with any of the reliefs specified in subsection (2).

30 (2) The relief referred to in subsection (1) shall be as follows:-

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(*a*) the arears of lease rentals;

(*b*) service charges, if any, until the plaintiff is restored   
 to vacant possession of the premises;

|  |  |  |
| --- | --- | --- |
| 5 | (*c*) | liquidated damages, if any, from the expiry of the |
| lease agreement or effective date of the termination |

of the lease agreement until the date of restoration   
of the plaintiff to the vacant possession of the   
premises;

|  |  |  |
| --- | --- | --- |
| 10 | (*d*) | interest on arrears of lease rentals, service charges |
| and liquidated damages at the rate of legal |

interest; or

(*e*) such costs as the Court may allow together with   
 such other reliefs prayed for by the plaintiff as the   
 Court may seem meet.

|  |  |  |
| --- | --- | --- |
| 15 | **6.** (1) The Court, when determining the liquidated | Liquidated |
| damages to be awarded under subsection (2) of section 5, | damages |

shall not award any sum in excess of twice the lease rental agreed to in the lease agreement, though any sum in excess of such liquidated damages has been agreed to by the parties

20 in the lease agreement.

(2)Where the parties have not agreed upon the liquidated damages payable in the lease agreement for the grounds of action specified in section3, the liquidated damages that may be awarded shall be the sum of the lease rental agreed to

|  |  |  |
| --- | --- | --- |
| 25 | by the parties in the lease agreement. | Payment of |
| **7.** A service charge shall notbe ordered unless the |
| defendant has agreed to pay such service charge in the lease | service |
| charge |
| agreement, either directly to the plaintiff or to another person |

on behalf of the plaintiff.

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PART II

SERVICEOF DECREE*NISI*

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| --- | --- | --- |
| 5 | **8.** (1) A decree *nisi* shall be served on the defendant to | Service of |
| recover possession of the premises as asserted by the plaintiff | decree *nisi* |
| ordinarily to |
| while giving the defendant a reasonable opportunity to make |
| be by |
| an application to seek leave to appear and show cause, in |
| registered |
| respect of his position. | post |

(2)The decree *nisi* shall be ordinarily served on the

|  |  |
| --- | --- |
| 10 | defendant by registered post at the premises or at the address given by the defendant in the lease agreement for service of |

notices, if any.

(3) The Registrar of the Court shall, within a period not later than three days from the date of entering of the decree *nisi* under section 5, initiate action to serve the decree *nisi*

|  |  |  |
| --- | --- | --- |
| 15 | on the defendant. | Service of |
| **9.** (1) The Court may, on application being made in that |
| 20 | behalf immediately after the decree *nisi* is entered under | decree *nisi* |
| by a process |
| section 5, and at its discretion, order that in addition to |
| officer |
| serving the decree *nisi* by registered post, the decree *nisi* |
| may also be served by tendering or delivering the same on |

the defendant personally through a process officer.

(2) In the case where such decree *nisi* is ordered to be served through a process officer under subsection (1), the Registrar of the Court shall authorize the process officer to 25 serve the decree *nisi* on the defendant within ten days from the receipt by such process officer of the decree *nisi* along with the precept in the form specified in the Second Schedule**.**

(3) The decree *nisi* may be served in any part of Sri Lanka.

Where a decree *nisi* ordered to be served personally through 30 a process officer 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

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within whose jurisdiction the defendant is believed to be residing forthwith, 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 5 Act.

(4) Where a decree *nisi* is required to be served outside the local limits of the jurisdiction of the Court issuing the same, the Court may, at its discretion or on application made by the plaintiff, for reasons to be recorded and upon such 10 terms as to costs, authorize the process officer of that Court to serve the decree *nisi* outside the local limits of the jurisdiction of that Court and to function as a special process server.

(5) It shall be the duty of the process officer to endeavour 15 to obtain the signature or the thumb impression or both of the defendant or any other person on his behalf, on the original precept in acknowledgment of the service of the decree *nisi*. The process officer shall return the precept to the Court together with the report informing the Court the manner 20   
 of service of the decree *nisi* as set out in the form specified in the Second Schedule referred to in subsection (2).

(6) If the service cannot be effected as referred to in subsection (1) by the exercise of due diligence, the process officer is authorized to affix the decree *nisi* in some

|  |  |
| --- | --- |
| 25 | conspicuous part of the premises without any further direction of the Court and report such service to the Court. |

The decree *nisi* served in the aforesaid manner shall be deemed to have been duly served on the defendant personally.

|  |  |  |
| --- | --- | --- |
| 30 | **10.** (1) Where the defendant is a public officer, the Court | Service of |
| may, at its discretion, in addition to sending the decree *nisi* | decree *nisi* |
| on a public |
| to the defendant by registered post, also forward a copy of |
| officer |
| the decree *nisi* in duplicate, by registered post to the Head of |

Office in which the defendant is employed.

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(2) In this section, “Head of Office”—

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

|  |  |  |
| --- | --- | --- |
| 5 | (*b*) | Unit; |
| when used with reference to a person employed in a |

Provincial Council, means the Secretary of that   
Provincial Council;

|  |  |  |
| --- | --- | --- |
| 10 | (*c*) | when used with reference to a person employed in |
| the 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 15 such Municipal Council and if the local authority is an Urban Council or a Pradeshiya Sabha, means the Chairman or Secretary of such Council or Sabha; and

|  |  |  |
| --- | --- | --- |
| 20 | (*e*) | when used with reference to any other public officer, |
| means the Head of the Department of the |

Government in which such person is employed.

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| --- | --- | --- |
| 25 | **11.** (1) The date to be specified in the decree *nisi* as the | Date to be |
| dateon whichthe defendant is to make an application | specified in |
| the decree |
| seeking leave to appear and show cause, if any, against the |
| *nisi* for the |
| decree *nisi* shall be as early a dateas can conveniently be | defendant to |
| apply to the |
| specified, regard being had to the distance from the |
| Court for |
| defendant’s residence to the Court. In any such instance, the | leave to |
| said date to be specified shall not be later than six weeks | appear |

from the date of the decree *nisi.*

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(2) The Court shall not grant the defendant any further timeto make an application to enable the defendant to seek leave to appear and show cause against such decree *nisi*.

PART III

|  |  |  |
| --- | --- | --- |
| 5 | DEFENDANTTO MAKEAN APPLICATIONTO APPEARAND SHOW CAUSE | Defendant to |
| **12. (**1) In an action instituted under this Act, the |
| defendant shall not appear and show cause against the decree | appear and |
| show cause |
| *nisi* unless he firstobtains leave to appear and show cause |
| only upon |
| from the Court which issued the decree *nisi*. |
| leave and |

security

10 (2) The defendant shall, for the purpose of subsection (1), file an application by way of a petition for leave to appear and show cause against the decree *nisi* supported by an affidavit and such petition and affidavit shall deal specifically with the plaintiff’s case and state clearly and 15 concisely what the defence to the plaintiff’s case is and what facts are relied upon to support it.

(3) Upon the filing of the petition and affidavit referred to in subsection (2), if the Court is satisfied that the contents of the petition and affidavit disclose a defence which is 20 *primafacie* sustainable against the action of the plaintiff for recovery of possession of the premises, the Court may grant the defendant leave to appear and show cause against the decree *nisi,* subject to security.

(4) If the Court is not satisfied that the contents of the 25 petition and affidavit disclose a defence which is *prima*  *facie* sustainable, the Court shall refuse the application referred to in subsection (2) and make the decree *nisi,*  absolute.

|  |  |  |
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| 30 | **13**. Wherethe Court grants leave to appear and show | Security to |
| cause undersection 12, the Court shall order the defendant | be furnished |
| by the |
| to furnish security which is not less than– |
| defendant |

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(*a*) the sum due to the plaintiff as the aggregate of the arrears of lease rentals, prayed for and specified in the decree *nisi*;

|  |  |
| --- | --- |
| 5 | (*b*) the aggregate sum due to the plaintiff as service charges up to the date of the order granting leave to |

appear and show cause prayed for and specified in   
the decree *nisi,* if such claim has been made; and

(*c*) the aggregate sum due to the plaintiff as liquidated damages prayed for and specified in the decree *nisi,* 10 from the expiry, or effective date of termination of the lease agreementupto the date of the order granting leave to appear and show cause and for a further period of one year from the date of granting such leave.

|  |  |  |
| --- | --- | --- |
| 15 | **14.** (1) The security ordered by the Court undersection | Security |
| 13 shall be deposited in cash in the Court within two weeks | ordered to be |
| from the date of the order. | deposited |
| within two |
| (2) The Registrar of the Court shall cause to issue a | weeks |

deposit note to deposit the same to an interest accruing bank

|  |  |
| --- | --- |
| 20 | account maintained by the Court and the moneys shall be kept in the account until a further order is made by the Court. |

(3) The Court shall not grant any period of extension to deposit the security ordered by the Court, unless the defendant, by an application made within the period of two

|  |  |
| --- | --- |
| 25 | weeks referred to in subsection (1), establishes sufficient reasons, to the satisfaction of the Court, for his inability to |

deposit the security. In such event, the Court may grant a further period which shall not exceed two weeks from the expiry of the previous time period granted by the Court.

|  |  |  |
| --- | --- | --- |
| 30 | **15.** Where the defendant- | Making the |
| (*a*) fails to make an application for leave to appear | decree *nisi* |
| absolute, by |
| the Court |
| and show cause on the date specified in the |

decree *nisi* under subsection (1) of section 11;

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(*b*) having made an application for leave to appear   
and show cause, has failed to disclose a defence   
which is *prima facie* sustainable against the   
action of the plaintiff for recovery of

5 possession of the premises; or

(*c*) fails to furnish the security ordered under   
section 13 within the time period specified   
under section 14,

the Court shall make the decree *nisi* absolute, without any 10 further notice to the defendant. In such instance, 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 separable

|  |  |
| --- | --- |
| 15 | parts, may be discharged in part and made absolute in part and anything herein enacted shall not prevent any order |

being made by the Court on the consent of the plaintiff and the defendant consequent to the decree *nisi.*

|  |  |  |
| --- | --- | --- |
| 20 | **16.** (1) An appeal by a defendant shall notlie against the | Order |
| making a |
| decree *nisi* which has been made absolute due to the |
| decree *nisi* |
| defendant’s failure to make an application in terms of |
| absolute on |
| 25 | paragraph (*a*) of section 15, but it shall be competent for | default not |
| Court, within a period not later than one yearafter the decree | appealable, |
| but may be |
| absolute was entered, to entertain an application by the |
| set aside |
| defendant by way of petition and affidavit filed against such |

decreeabsolute, to have it set aside on the ground that-

(*a*) thedefendant was prevented from appearing in   
 Court after the decree *nisi* was served on him by   
 reason of accident or misfortune or an act of God; or

|  |  |  |
| --- | --- | --- |
| 30 | (*b*) | such decree *nisi* was not served on the defendant. |

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(2) In addition to the grounds referred toin subsection (1), the defendant shall also plead in the petition and affidavit, the grounds for leave to appear and show cause against the decree absolute. The petition and affidavit shall deal 5 specifically with the plaintiff’s case and state clearly and concisely what the defence to the plaintiff’s case is and what facts are relied upon to support it.

(3) On filing the petition and affidavit by the defendant in terms of subsections (1) and (2), if the Court, after giving 10 the parties an opportunity of being heard, on satisfied that-

(*a*) the failure on the part of the defendant to make an   
 application under paragraph (*a*) of section 15 was   
 due to any ground specified in subsection (1); and

|  |  |  |
| --- | --- | --- |
| 15 | (*b*) | the defendant has disclosed a defence which is |
| *prima facie* sustainable, |

the Court may set aside the decree absolute subject to security that shall be furnished under section 13 and shall proceed to determine the matter in accordance with the provisions of this Act, if such security is deposited within 20 the period specified under section 14.

(4) If the defendant fails to furnish the security referred to in subsection (3) within the time period specified for such purpose, the Court shallthen make an order making the decree *nisi* absolute.

25 (5) Where the defendant fails to satisfy the Court as provided for in paragraphs (*a*) and (*b*) of subsection (3), the Court shall dismiss the application of the defendant, with costs.

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PART IV

PROCEDUREAFTER GRANTING LEAVETO APPEARAND SHOW CAUSE

|  |  |  |
| --- | --- | --- |
| 5 | **17**. (1) Where the Court- | Procedure |
| where leave |
| (*a*) grants leave to appear and show cause against | to appear and |
| show cause is |
| a decree *nisi* to the defendantunder |
| granted |
| subsection (3) ofsection 12 and the security |

ordered is deposited within the specified   
period; or

(*b*) settingaside the decree absolute, grants leave 10 to appear and show cause to the defendant under subsection (3) ofsection16 and the security ordered to be furnished is deposited within the specified period**,**

the provisions of sections 384, 385, 386 and 387 of the 15 Civil Procedure Code shall, *mutatis mutandis*, apply in respect of the proceedings before the Court.

(2) For the purpose of section 384 of the Civil Procedure Code, the application filed by the defendant for leave to appear and show cause shall be deemed to be the objection 20 of the defendant and the affidavit filed by the defendant in support of such application shall be deemed to be the affidavit of the defendant.

(3) The Court shall pronounce the final order in the matter of the plaint, either discharging the decree *nisi* or making 25 the decree *nisi* absolutewithin one year from the date of granting leave to appear and show cause.

(4) The final order so pronounced shall be endorsed on the decree *nisi* either with the words “Decree *nisi* discharged”or “Decree *nisi* made absolute” or words to the like effect

|  |  |
| --- | --- |
| 30 | and such endorsement shall be dated and signed by the Judge of the Court: |

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Provided that a decree *nisi*, if it consists of separable parts, may be discharged in part and made absolute in part, and anything herein enacted shall notprevent any order

|  |  |  |
| --- | --- | --- |
| 5 | being made by consent of the plaintiff and the defendant on | Original |
| the footing of the decree *nisi*. |
| **18**. In any proceedings under this Act, the Court may |
| 10 | order that the originals of the lease agreement or other | documents |
| document copies of which were filed with the plaint or on | filed to be |
| made |
| which the action is founded, be made available for |
| available |
| examination by the Court when the action is supported in |
| for |
| Court. Notwithstanding anything to the contrary in the Civil | examination |
| Procedure Code,such agreement or document shall be |

returned to the plaintiff after such examination.

|  |  |  |
| --- | --- | --- |
| 15 | **19.** (1) Where, after entering a decree *nisi* - | Award of |
| compensation |
| (*a*) it appears to the Court that such decree *nisi* |
| was obtained by wilful suppression or non- |

disclosure of any material facts; and

(*b*) the decree *nisi* was discharged and the action

|  |  |
| --- | --- |
| 20 | was dismissed onthe groundsof such wilful suppression or non-disclosure of material facts, |

the Court may in the same action, on the application filed by the defendant against whom the decree *nisi* was entered, award compensation and costs for the expenses or injury caused to such defendant, in such sum as the Court deems 25 reasonable, to be paid by the plaintiff.

(2) An award made under subsection (1) shall operate as a bar to any action for compensation in any subsequent proceeding under this Act.

(3) Notwithstanding the dismissal of any action

|  |  |
| --- | --- |
| 30 | 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.

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| --- | --- | --- |
| 5 | **20.** (1) Where the defendant appears in Court in response | Surrender of |
| to the decree *nisi* and agrees to surrender the possession of | possession of |
| the premises |
| the premises or to settle the arrears of lease rentals, service |
| by the |
| charges and liquidated damages, as the case may be, on such | defendant, |
| terms and conditions that may be agreed upon by the parties, | &c |

the decree *nisi* shall be made absolute subject to such terms and conditions as agreed upon by the parties before the Court.

(2) Notwithstanding anything to the contrary contained

10 in thesucceeding provisions of this Act, the decree absolute referred to in subsection (1) shalloperate as a stay of execution of proceedings as agreed to by the parties, provided that the defendant shall not act in breach of any of the terms and conditions of settlement, in which event the plaintiff

|  |  |  |
| --- | --- | --- |
| 15 | shall be entitled to execute such decree absolute. | Discharge of |
| **21.** The discharge of a decree *nisi* or dismissal of an action |
| 20 | under the provisions of this Act shall not operate as a bar for | a decree *nisi* |
| or dismissal |
| any other action instituted for the recovery of possession of |
| of an action |
| the premises by the lessor or any other person entitled to the |
| not to bar |
| possession of such premises, on any appropriate cause of | any |
| subsequent |
| action under an applicable procedure in the Civil Procedure |
| action |
| Code or any other law. |

PART V

PROCEDURE AFTER MAKINGTHE DECREE*NISI*ABSOLUTE

|  |  |  |
| --- | --- | --- |
| 25 | **22. (**1) Subject to an order of the Court, where a decree | Decree |
| *nisi* entered in an action instituted under this Act is made | absolute |
| deemed to be |
| absolute, it shall be deemed to be a writ of execution duly |
| a writ of |
| issued to the Fiscal in terms of subsection (3) of section 225 | execution |

and section 323 of the Civil Procedure Code, and the same

30 shall be executed fourteen days after the date oforder making the decree absolute, without any further notice to the defendant.

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(2) Notwithstanding anything to the contrary in anyother written law, the execution of the decree *nisi* made absolute shall not be stayed.

(3)The writ of execution referred to in subsection (1)

|  |  |
| --- | --- |
| 5 | shall be valid for a period of not more than one year 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 specified in the Civil Procedure Code for the execution of writs.

10 (4) Notwithstanding anything to the contrary in any other written law, preferring an appeal or an application for revision or an application for *restitutio in integrum* by the defendant*,* in respect of a decree *nisi* made absolute, shall

|  |  |
| --- | --- |
| 15 | not be a ground to stay the proceedings unless the Appeal Court makes an order expressly staying such proceedings. |

(5) Before the Appeal Court makes an order expressly staying the execution in pursuance of an appeal oran application made by the defendant, it shall call upon the defendant to furnish a security in cash for the satisfaction of 20 the entire monetary claim of the plaintiff under section 13 inclusive of liquidated damages or such part thereof as the Appeal Court may deem fit, having consideredall the circumstances of the case, in the event the main appeal or application is dismissed:

|  |  |
| --- | --- |
| 25 | Provided that no such stay ordershall be issued unless sufficient notice has is given to the plaintiff or his registered |

attorney.

|  |  |  |
| --- | --- | --- |
| 30 | **23. (**1) If the Fiscal is resisted or obstructed by any person | Resistance |
| while executing a writreferred to in section 22, the Fiscal | deemed to be |
| contempt |
| shall, within fourteen days of the resistance or obstruction, |

report such resistance or obstruction to the Court and the Court shall thereupon issue a notice against the person resisting or obstructing requiring him to show cause as to

|  |  |
| --- | --- |
| 35 | why he should not be dealt with for contempt of Court occasioned by such resistance or obstruction. |

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(2) (*a*) Any person resisting or obstructing the Fiscal while executing a writ under this Act commits contempt of Court, unless-

|  |  |  |
| --- | --- | --- |
| 5  10  15  20  25 | (i) | such person, not being the judgment debtor, |
| proves to the satisfaction of Court that the resistance or obstruction has been occasioned by such person claiming in good faith to be in possession of the whole of such premises on his own account or on account of some person other than the judgment debtor, by virtue of any right or interest; or | |
| (ii) | the claim notified is found by the Court to have |
| been made by aperson claiming to be in possession of the whole of such premises on his own account or on account of some person other than the judgment debtor, by virtue of any right or interest.  (*b*) Any person who commits contempt of court under paragraph (*a*) shall be liable to a fine not exceeding rupees five hundred thousand or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.  (3) 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 (2). | |

(4) In addition to imposing punishment on the convicted person under subsection (2), the Court shall order the Fiscal to place the plaintiff judgment creditor in vacant and peaceful possession of the relevant premises.

|  |  |  |
| --- | --- | --- |
| 30 | **24.** (1) Subject to the provisions of subsection (2), a | Change of |
| defendant or his legal representative shall not place in | possession or |
| 35 | *status quo* of |
| possession a third party in the premises in any manner |
| the premises |
| whatsoever after the decree *nisi* entered in the action is served |
| by the |
| on such defendant or his legal representative, and such act |
| defendant |
| shall amount to contempt of Court: | after |
| institution of |
| action |

Provided however, if the action is dismissed or the decree *nisi* is discharged, this prohibition shall no longer be applicable.

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 *Given on Lease*

|  |  |
| --- | --- |
| 5  10  15  20 | (2) It shall be the duty of the defendant or his legal representativeto maintain the *status quo* of the premises in the same condition as it was at the time of service of decree *nisi* and the defendant or his legal representativeshall not change the *status quo* of the premises without anorder of the Court.  (3) Where the possession of any premises has been delivered to a third party either completely or partly in contravention of the provisions of subsection (1), such alienation shall be *null and void* and of no force or effect in law. Such third party and all those holding possession of the premises under him, shall be liable for ejectment from the premises, as in a writ of execution as a party bound by the decree, although such third party is not a party to the decree.  (4) Notwithstanding anything to the contrary in any other written law, any person who is guilty of contempt of Court under subsection (1) shall be liable to a fine not exceeding rupees five hundred thousand or to an imprisonment for a term not exceeding two years or to both such fine and imprisonment. |

(5) 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 (4).

25 PART VI

APPEALS

|  |  |  |  |
| --- | --- | --- | --- |
| 30 | **25**. (1) Any person aggrieved by- | | Preferring |
| appeals |
| (*a*) | an order making a decree *nisi* absolute by |
| against an |
| order of the |
| refusing an application made by the defendant | |
| Court |
| on the grounds specified in paragraphs (*b*) and | |
| (*c*) of section 15; | |
| (*b*) | an order under subsection (4) of section 16, |
| making a decree *nisi* absolute on failure by the | |

defendant to furnish security;

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 *Given on Lease*

(*c*) an order under subsection (5) of section 16   
 dismissing an application made by the defendant   
 to have the decree absolute set aside; or

|  |  |  |
| --- | --- | --- |
| 5 | (*d*) | a final order made under subsection (3) of section |
| 17either discharging the decree *nisi* or making the |

decree *nisi* absolute,

may prefer an appeal in terms of the provisions of section 754 of the Civil Procedure Code.

(2) Notwithstanding the preferring of any such appeal, 10 the execution of writ of execution shall not be stayed.

(3) Where the Appeal Court allows an appeal setting aside a decree absolute and where the writ has already been executed undersection 22of this Act, theAppeal Court shall enter a decree in favour of the appellant awarding 15 damages in such sum as it may consider appropriate for the loss of premises for his occupation or business during the validity period of the lease and may, at its discretion, order restoration of the appellant to the vacant possession of the premises:

20 Provided however, the Appeal Court shall not order restoration of the appellant if the lease period for which the premises has been given to the appellant under the lease agreement has already expired as at the date of the judgment of the Appeal Court.

25 (4) Where the Appeal Court makes an order to enter a decree *nisi* absolute, such decree shall be deemed to be a writ of execution duly issued to the Fiscal in terms of subsection (3) of section 225 and section 323 of the Civil Procedure Code, but the execution of the same shall be 30 stayed until the expiration of the period allowed by law to make an appropriate applicationto the Supreme Court.

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(5) Notwithstanding anything to the contrary in any other written law, the writ shall be executed after the period allowed by lawfor making an application to the Supreme Court, unless the Supreme Court makes an express order 5 staying the execution.

PART VII

MISCELLANEOUS PROVISIONS

|  |  |  |
| --- | --- | --- |
| 10 | **26.** In any matter or question of procedure not provided | *Casus* |
| for in this Act, the procedure laid down in the Civil Procedure | *omissus* |
| Code in respect of a like matter or question shall be followed |

by the Court if such procedure is not inconsistent with the provisions of this Act.

**27.** Where any form to be used for the purposes of this Act Forms

has not been specified in this Act, such form as may be

|  |  |  |
| --- | --- | --- |
| 15 | required, may be prescribed by the Minister for such purpose. | Recovery of |
| **28.** (1) Notwithstanding anything to the contraryin any |
| 20 | other written law, in an action instituted under this Act, if | unsettled |
| utility bills or |
| the defendant has defaulted the settlement of any payment |
| service |
| due and payable by him under the lease agreement by way |
| charges due |
| of service charge or part thereof or any utility bills or part | as at the time |
| thereof,from the date of the plaint until the date of writ of | of execution |
| execution, the plaintiff shall make an application in the | of the decree |

same action within a period of three months from the date of execution of writ and delivery of vacant possession of the

|  |  |
| --- | --- |
| 25 | premises to the plaintiff, by petition and affidavit supported by relevant documentary evidence to establish such non- |

settlement, for the recovery of such dues and interest and penalty imposed on such dues.

(2) The Court, onbeing satisfied of the contents contained

|  |  |
| --- | --- |
| 30 | in the petition, affidavit and the documentary evidence referred to in subsection (1), may make an order, directing |

the defendant to appear and show cause why the Court should not make an order to pay such sum specified in the order**,** to the plaintiff.

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(3) The Court may, after due inquiry, make an order awarding the plaintiff any such arrears of utility bills and service charges upto the date of delivery of the vacant possession of the premises to such plaintiff together with 5 any interest or penalty on such bills or charges.

(4) The provisions relating to decrees for money set out in the Civil Procedure Code shall *mutatis mutandis* apply for the recovery of the moneys awarded in such order**.**

(5) Any defendant who intends to appeal against an order 10 made under subsection (3) shall deposit in the Court the full sum ordered for payment as a security, as a condition precedent to such appeal and the Court is entitled to reject any such appeal without a deposit of the full sum ordered as security.

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| 15 | **29. (**1) There shall be maintained a special register in the | A special |
| form specified in the Third Schedule in every Court for | register and |
| special |
| actions instituted under this Act and such actions shall be |
| inquiry roll |
| assigned a number distinctive from other actions. |
| to be |

maintained (2) In every Court in which cases may be instituted under   
20 this Act,a special inquiry roll shall be kept of such cases in   
 which leave to appear and show cause against a decree *nisi*   
 has been granted. 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   
25 of such Court to the contrary notwithstanding, and after   
 giving the parties reasonable notice of the date of inquiry.

PART VIII

GENERAL PROVISIONS

|  |  |  |
| --- | --- | --- |
| 30 | **30.** The provisions of any other written law relating to | Applicability |
| lease agreements shall, in so far as they are not inconsistent | of other laws |
| with the provisions of this Act, apply to lease agreements |

governed by this Act.

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|  |  |  |
| --- | --- | --- |
| 5 | **31.** (1) The provisions of this Act shall be applicable to | This Act to be |
| any lease agreement, notwithstanding that such lease | applicable for |
| lease |
| agreement has been entered into and executed prior to the |
| agreements |
| date of commencement of this Act. |
| executed prior |
| (2) Where such lease agreement has expired or terminated | to the |
| commencement |
| prior to the date of commencement of this Act, the lessor | of this Act |
| shall be entitled to commence proceedings from the date of |

commencement of this Act for the recovery of the possession of the premises and the arrears of lease rentals, service charges

|  |  |  |
| --- | --- | --- |
| 10 | and liquidated damages under this Act, unless the lessor has | Actions |
| not entered into a fresh lease agreement with the lessee. |
| **32**. Notwithstanding anything to the contrary in any other |
| 15 | writtenlaw, where a lessor has instituted an action for the | pending on |
| the date of |
| recovery of the possession of a premises and such action is |
| commencement |
| pending on the date of commencement of this Act, such |
| of this Act |
| lessor shall be entitled to institute action under this Act for |

the recovery of the possession of such premises and other reliefs after the commencement of this Act.

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| 20 | **33.** The provisions of this Act shall be in addition to and | Saving other |
| not in derogation of any other remedy that may be available | remedies |
| in law to a lessor of a premises given on lease under a lease |
| agreement, for the recovery of possession of such premises |

or for the recovery of any money, damages, utility bills or other payments from the lessee under such lease agreement.

|  |  |  |
| --- | --- | --- |
| 25 | **34.** (1) Nothing in the Rent Act, No. 7 of 1972 shall apply | Non- |
| to, or in relation to, a lease agreement executed on or after | applicability |
| of the Rent |
| the date of commencement of this Act. |
| Act |

(2) Nothing contained in section 29 of the Rent Act, No. 7 of 1972 shall preclude any person from instituting an action

|  |  |  |
| --- | --- | --- |
| 30 | under this Act. | Effect of |
| **35.** Where any appointment is made in substitution of a |
| party as his legal representative under Chapter XXV of the | legal |
| representative |
| Civil Procedure Code, the person so appointed shall be |
| being made a |
| treated as a party to the action, andevery order**,** decree *nisi* |
| party |

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ordecree absolute madeor anything done in the action instituted under this Act, including the recovery of possession of the premises given on lease to a deceased lessee and any recovery of damages shall beenforceable

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | against such substituted party. | | Offences by |
| **36**. Where an offence under this Act is committed by a | |
| body of persons, then- | | a body of |
| persons |
| (*a*) | if that body of persons is a body corporate, every |

director, manager or secretary of that body

|  |  |  |
| --- | --- | --- |
| 10 | (*b*) | corporate; |
| 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 15 unincorporated body,

shall be deemed to have committed that offence:

Provided that any director, manager or secretary of such body corporate or any partner of such firm or any individual in such unincorporated body shall not be deemed to have

|  |  |
| --- | --- |
| 20 | committed such offence, if he proves that such offence was committed without his knowledge or that he exercised all |

due diligence to prevent the commission of such offence.

**37.(**1) The Minister may, for the purpose of giving effect Regulations to the principles of this Act, make regulations in respect of

|  |  |
| --- | --- |
| 25 | any matter which is required by this Act to be prescribed or in respect of which regulations are required or authorized to |

be made under this Act.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on

|  |  |
| --- | --- |
| 30 | the date of such publication, or on such later date as may be specified in the regulation. |

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(3) (*a*) Every regulation made by the Minister shall, within three months after its publication in the *Gazette*, be brought before Parliament for approval.

|  |  |
| --- | --- |
| 5 | (*b*) Any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything duly done thereunder. |

(4) Notification of the date on which a regulation is deemed to be rescinded shall be published in the *Gazette.*

|  |  |  |
| --- | --- | --- |
| 10 | **38.** In this Act, unless the context otherwise requires- | Interpretation |
| “Appeal Court” means any court exercising civil |
| appellate, revisionary or *restitutio in integrum* |
| jurisdiction over orders or judgments of the |
| District Court; |
| 15 |
| “Civil Procedure Code” means the Civil Procedure |
| Code (Chapter 101); |

“Court” means the District Court having jurisdiction;

|  |  |
| --- | --- |
| 20  25  30 | “lease agreement” means any agreement involving the lessor of a premises and a lessee duly executed in terms of section 2 of the Prevention of Frauds Ordinance (Chapter 70) or an instrument of lease duly executed under the provisions of the Registration of Title Act, No. 21 of 1998, for which the stamp duty has been duly paid;  “legal interest” means interest calculated at the rate as determined and published by the Monetary Board under subsection (2) of section 192 of the Civil Procedure Code;  “lessee” means a person who acquires the right to possession of a premises by way of an instrument duly executed before a notary public for the time being in force, and in the event of his death, includes his heirs, executor, administrator or legal representative; |

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“lessor” means a person who transfers the right to possession of a premises by way of an instrument duly executed before a notary public for the time being in force, and in the event of his death, 5 includes his heirs, executor, administrator or legal representative;

“other person on his behalf” includes any agent of   
the defendant who is in charge of the premises   
which is the subject matter of the action;

10 “possession” includes being in physical occupation of the premises or having retained the keys of the premises;

“premises” means any building or part of a building

|  |  |
| --- | --- |
| 15 | together with the land appertaining thereto and includes a bare land without a building or a part |

of a multi-storied building;

“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 20 the Fiscal of the Court under any written law;

“process officer” means-

(*a*) the Fiscal assigned by the Court within   
 the local limits of whose jurisdiction the   
 decree *nisi* is to be served;

|  |  |  |
| --- | --- | --- |
| 25 | (*b*) | any other officer specially authorized in |

special circumstances by the Court to   
serve the decree *nisi;*

(*c*) Grama Niladhari; or

(*d*) a private process server;

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“public officer” shall have the same meaning as in   
 Article 170 of the Constitution; and

“service charge” means any service charge or   
management fee payable by the owner of a

|  |  |
| --- | --- |
| 5 | condominium unit to the Management Corporation established in relation to such |

condominium property under the Apartment   
Ownership Law, No. 11 of 1973 or any service   
charge or management fee payable by the owner

|  |  |
| --- | --- |
| 10 | of a property to a management company or society where such property is situated within |

any property complex managed by such   
company or society and where such service   
charge is payable by the lessee under the relevant

|  |  |  |
| --- | --- | --- |
| 15 | agreement between the lessor and the lessee. | Sinhala text |
| **39**. In the event of any inconsistency between the Sinhala |
| and Tamil texts of this Act, the Sinhala text shall prevail. | to prevail in |
| case of |

inconsistency

|  |  |
| --- | --- |
| **FIRST SCHEDULE** | [Section 5] |

FORM OF DECREE *NISI*   
*(Title.)*

This action coming on for disposal before *(name and office of Judge*) on the ...........................day of ....................., 20................., and after reading the plaint and documents and on being satisfied of the averments contained in the affidavit of (*name of the plaintiff*) dated ................., it is ordered and decreed that-

(*a*) (*name of the defendan*t), his servants, agents and all   
those holding possession of the premises described in   
the Schedule hereto under him be ejected from the   
premises;

(*b*) (i) the above-named defendant do pay to the   
 above-named plaintiff a sum of   
 Rs...............being the arrears of lease rental   
 prayed for in the plaint, (if applicable);

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(ii) the above-named defendant do pay to the   
 above-named plaintiff a sum of Rs……. being   
 the arrears of service charge due up   
 to…………….. and further service charge at   
 the rate of Rs. …………per mensem from  
 …………… until the above-named plaintiff   
 is restored to vacant possession of the premises   
 described in the Schedule hereto, (if   
 applicable);

(iii) the above-named defendant do pay to the   
above-named plaintiff a sum of Rs……….   
being the liquidated damages at the rate of   
Rs. ………. per month/quarter/year from  
………. …. until the above-named plaintiff   
is restored to vacant and peaceful possession   
of the premises described in the Schedule   
hereto, (if applicable),

and interest at the legal rate on such sums from……………. until payment in full together with costs of action.

These are therefore to command the Fiscalof the ....................Province to enter and to have possession of the premises described in the Schedule hereto, to eject the above-nameddefendant, his servant**s**, agents and all those holding under him from the premises described in the Schedule hereto, deliver vacant possession to the plaintiff or any person authorized by the plaintiff and levy and make of the houses, lands, goods, debts and credits of the above-named defendant by seizure, and if necessary, by sale thereof, the sums mentioned above which the above-named plaintiff has to recover against the said defendant by this decree of Court, and have that money before the Court within ……………. days of this decree *nisi* being made absolute and inform this Court for what sum or sums and to what person or persons the Fiscal of the ......................Province has sold the property respectively and this decree *nisi,* when made absolute, shall serve as a mandate for such purpose.

It is further ordered that the above-named defendant shall appear before this Court on the............day of ................., 20................at (time)..........and make an application seeking leave from the Court to appear and show cause, if any, why this decree *nisi* should not be made absolute. Where leave is so granted to appear and show cause and sufficient security as determined by Court is deposited, the said defendant is permitted to appear and show cause against the decree *nisi*. However, if no application is made or where an application is made and leave to appear and show cause is not granted, for reasons assigned, the decree *nisi* shall be made absolute against the said defendant.

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The Schedule of the premises above referred to

(Signed).......................

(Name and office of Judge)

On this .....................day of …………...., 20.............

**SECOND SCHEDULE**

[Sections 9(2) and 9(5)]

FORM OF PRECEPT TO A PROCESS OFFICER/ FISCAL/GRAMA NILADHARI/PRIVATE PROCESS SERVER TO SERVE DECREE *NISI*   
*(Title.)*

To the Fiscal/Grama Niladhari of the..............................,

……………………, Private Process Server,

………………. Court of ...............................,

Serve forthwith the decree *nisi* in the above-named action, which, with duplicates, is herewith transmitted to you, upon each of the persons to whom it is directed, and leave with or tender to each such person a duplicate decree *nisi* and one of the copies of the plaint which accompany the decree *nisi*.

It shall be your duty when serving the decree *nisi* on the defendant or any other person on his behalf, to endeavour to obtain the signature or the thumb impression or both of such defendant or such person in acknowledgment of the service of the decree, on the original precept.

If you are unable to serve the decree *nisi* in exercising due diligence, you are hereby authorized to affix the decree *nisi* in some conspicuous part of the premises which is the subject matter of the action given in the Schedule of the plaint, without any further direction of the Court and in every such case, you shall report to the Court that you served the decree *nisi* by affixing the decree *nisi* in a conspicuous place of the premises in suit.

You are hereby directed to certify to this Court within ten (10) days from the date hereof by way of a report, setting out in detail ofthe manner, the person, place and other particulars relating to the identity of the person on whom the decree *nisi* was served, 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 precept and to attach to your certificate the original precept as an exhibit.

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By Order of Court,   
 (Signed) .........................

Registrar,   
District Court of ...............

On this …......day of.................., 20.................

**THIRD SCHEDULE**  
 [Section 29]   
FORM OF REGISTER

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| No. of action | Name of plaintiff | Name of  defendant | Premises in suit | Date of decree  *nisi* | Date of  decree  absolute/ discharge | Date of  satisfaction of decree | Any  other  matter |
|  |  |  |  |  |  |  |  |

|  |  |
| --- | --- |
| *Recovery of Possession of Premises* | 29 |

*Given on Lease*

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