



PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA

DEBT RECOVERY (SPECIAL PROVISIONS)
ACT, No. 2 OF 1990

[Certified on 6th March, 1990]

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Debt Recovery (Special Provisions)

Act, No. 2 of 1990

[Certified on 6th March, 1990]

L.D.—O. 63/89.

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

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

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

PART I

INSTITUTION OF ACTION

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

- (a) a party defendant resides ; or
- (b) the cause of action arises ; or
- (c) the contract sought to be enforced was made.

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

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

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

(2) If any instrument, agreement or document is produced to court and the same appears to the court to be properly stamped (where such instrument, agreement or do-

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

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

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

(5) The institution shall tender with the plaint—

- (a) the affidavit and instrument, agreement or document referred to in subsection (1) of this section;
- (b) draft decree *nisi*; and
- (c) the requisite stamps for the decree *nisi* and service thereof.

Procedure for
serving
decree *nisi* on
defendant.

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

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

Defendant not to appear or show cause except with leave.

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

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

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

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

(3) In default of the defendant obtaining such leave for appearance and showing cause the court shall make the decree *nisi* absolute, and the provisions of section 389 of the Civil Procedure Code (Chapter 101) shall, *mutatis mutandis*, apply to such order. For this purpose, the Judge shall endorse the words "Decree *nisi* made absolute" (or words to the like effect) upon the decree *nisi* and shall date and sign such endorsement.

7. If the defendant appears and leave to appear and show cause is given the provisions of sections 384, 385, 386, 387, 388, 390 and 391 of the Civil Procedure Code (Chapter 101) shall, *mutatis mutandis*, apply to the trial of the action.

Procedure where leave to appear and defend is granted.

8. In any proceeding under this Act the court may order the instrument, agreement or other documents which are produced to the court with the plaint or on which the action is founded to be forthwith deposited with an officer of the court, and may further order that all proceedings shall be stayed until the institution gives security for the costs thereof.

Court may order deposit of instrument, agreement or documents.

Recovering
of expenses
incurred
in noting.

9. Where the institution is the holder of a dishonoured bill of exchange or promissory note it shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise by reason of such dishonour as such institution has under this Act for the recovery of the amount of such bill or note.

Roll

10. In the court where cases may be instituted under this Act a Special Inquiry Roll shall be kept of such cases in which leave to appear and show cause against the decree *nisi* has been granted, and it shall be competent for the Judge of such court to order such cases to be set down for hearing on such days as may facilitate their early disposal, any rule or practice of such court to the contrary notwithstanding, and after giving the parties, reasonable notice of the date of inquiry.

Damages
against
institution.

11. If it appears to the court that the decree *nisi* was obtained on insufficient grounds, or if after the entering of a decree *nisi* the action is dismissed and the decree *nisi* is discharged by default or otherwise, and it appears to the court that there was no reasonable ground for entering the decree *nisi*, the court may, in the same action on the application of the party against whom the decree *nisi* was entered, award against the institution obtaining the same, such sum as it deems reasonable compensation for the expense or injury caused to such party by the entering of the decree *nisi* and an award under this section shall bar any action for compensation in respect of the entering of the decree *nisi*.

Adjustment
of action.

12. Where the defendant appears in court in response to the decree *nisi* and does not contest the decree *nisi* but admits liability and prays to liquidate the debt in instalments, the court shall minute this fact on the record and obtain the defendant's signature thereto. The court shall thereafter make the decree absolute and shall enter terms of settlement as to instalments for the liquidation of the debt sued for in term of section 408 of the Civil Procedure Code (Chapter 101). Such settlement shall operate as a stay of execution proceeding unless the defendant acts in breach of any of the terms of settlement in which event the institution shall be entitled to execute the decree.

PART II

OF SPECIAL PROVISIONS RELATING TO EXECUTION

13. Subject to orders of court, where a decree nisi entered in an action instituted under this Act is made absolute it shall be deemed to be a Writ of Execution duly issued to the Fiscal in terms of section 225 (3) of the Civil Procedure Code (Chapter 101) and it shall be the duty of the Fiscal to execute the same in the manner prescribed in the Civil Procedure Code for the execution of Writs.

decree
absolute
deemed to be
a Writ.

14. (1) If the Fiscal be resisted by any person while executing a writ referred to in section 13 the Fiscal shall report such resistance to the court and the court shall thereupon issue a notice against the person resisting requiring him to show cause as to why he should not be dealt with for contempt of court occasioned by such resistance.

Resistance
deemed to
be contempt.

(2) Any person resisting the Fiscal while executing a writ under this Act shall be deemed to be guilty of contempt of Court and shall be liable to the penalties prescribed for contempt of court by the Judicature Act, No. 2 of 1978 and the Civil Procedure Code (Chapter 101) unless he proves that the property sought to be seized belonged to a person other than the judgment debtor.

(3) If the person resisting the Fiscal appears in court and claims that the property sought to be seized by the Fiscal is being held by him on account of any person other than the judgment debtor or person holding under such judgment debtor such person shall be called upon to furnish security for the satisfaction of the decreed sum or such part thereof as the court deem fit in all the circumstances of the case, in the event of his claim failing or in the discretion of court such person may be allowed to give an undertaking that the property sought to be seized would remain in constructive Fiscal custody until the claim inquiry is concluded.

Alienation
of property
by judgment
debtor
after
institution
of action.

15. (1) Whenever an action is instituted under this Act the same shall be entered in a special register maintained by court substantially in the form set out in the Second Schedule to this Act.

(2) Where the defendant or his representative in interest alienates any movable or immovable property or otherwise disposes of same in any manner whatsoever after the decree *nisi* such alienation shall be *null and void* and of no force or effect in law and shall be open to seizure in whosoever's hands such property may be :

Provided that such alienation shall be valid if the action is dismissed or the decree *nisi* is discharged : and

Provided further that such alienation shall also be valid, if the decree absolute is satisfied, but only in respect of such of the property alienated as has not been seized and applied in satisfaction of the decree absolute : and

Provided further that such alienation shall also be valid property in the hands of an alienee who has come by such property in good faith for consideration without having notice of the decree *nisi* either at the time the purchase money was paid, or when the conveyance was executed nor to an alienee from such an alienee, the burden of proof of which facts shall be on such alienee.

(3) The Registrar of the court shall in addition to the register to be maintained under this section maintain also an index of the names of the defendants against whom actions have been filed under this Act and such index shall be in alphabetical order.

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

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

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

PART III

Cf APPEALS

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

Amendment
of section
756 (7) of the
Civil Procedure
Code.

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

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

Amendment
of Section
763 of Civil
Procedure
Code.

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

Amendment
of Section
23 of the
Judicature
Act.

18. Section 23 of the Judicature Act No. 2 of 1978, as amended by section 2 of Act No. 37 of 1979 is further amended by the addition at the end of that section of the following proviso :—

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

PART IV

OF SPECIAL PROVISIONS

Casus. omis-
sus.

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

Forms.

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

Action
not
to be
entertained
in certain
circumstances
where
interest
claimed
exceeds
sum due as
principal.

21. No action by a lending institution for the recovery of a loan—

(a) not exceeding two hundred fifty thousand rupees or such other sum as the Minister may, by Order published in the Gazette, fix; or

(b) recoverable over a period of not less than five years, due to such lending institution, in terms of the procedure laid down by this Act, shall be entertained by any court if the amount claimed as interest on such loan exceeds the sum due as principal.

No sum of
money to be
recovered
as penalty
for default.

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

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

PART V

MISCELLANEOUS

24. Nothing in the Debt Conciliation Ordinance Exemptions.
(Chapter 81) and the Money Lending Ordinance (Chapter 80) shall apply to, or in relation to, an institution.

25. (1) Any person who—

(a) draws a cheque knowing that there are no funds or Offences.
not sufficient funds in the bank to honour such cheque ; or

(b) makes an order to a banker to pay a sum of money which payment is not made by reason of there being no obligation on such banker to make payment or by reason of the payment having been countermanded ; or

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

(d) having accepted on inland bill dishonours it by non-payment,

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

(2) The expressions "cheque", "dishonoured", "banker", "Inland Bill" and "Bill" shall have the respective meanings assigned to them in the Bills of Exchange Ordinance (Chapter 82), and the term "dishonest" shall have the same meaning as in section 22 of the Penal Code (Chapter 19).

Pending
actions.

26. Notwithstanding anything to the contrary in the Prescription Ordinance where an institution has instituted action for the recovery of any debt due to it and such action is pending on the date of commencement of this Act, such institution shall be entitled to institute action under this Act for the recovery of that debt:

Provided that this section shall not apply to any pending action where the cause of action on the debt was prescribed as at the date of the institution of such first mentioned action.

Appointment
of represen-
tative of
deceased
debtor or of
deceased
party to an
action under
this Act.

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

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(2) In making any appointment under subsection (1) the court shall appoint as representative a person who, after summary inquiry, appears to the court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued :

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

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

Effect of representative being made a party.

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

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

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

Interpretation.

“debt” means a sum of money which is ascertained or capable of being ascertained at the time of the institution of the action, and which is in default, whether the same be secured or not, or owed jointly or severally, and alleged by a lending

institution to have arisen from a transaction in the course of banking, lending, financial or other allied business activity of that institution, but does not include a promise or agreement which is not in writing ;

“lending institution” means—

- (a) a licensed Commercial Bank within the meaning of the Banking Act, No. 30 of 1988 ;
- (b) the State Mortgage and Investment Bank established by the State Mortgage and Investment Bank Act, No. 13 of 1975 ;
- (c) the National Development Bank established by the National Development Bank of Sri Lanka Act, No. 2 of 1979 ;
- (d) the National Savings Bank established by the National Savings Bank Act, No. 30 of 1971 ;
- (e) the Development Finance Corporation of Ceylon established by the Development Finance Corporation of Ceylon Act (Chapter 165) ; and
- (f) a company registered under the Finance Companies Act, No. 78 of 1988, to carry on finance business ;

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

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

Sinhala text
to prevail in
case of
inconsistency.

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

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

13

FIRST SCHEDULE

[Section 4(2)]

Form of Decree *Nisi*

(Title)

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

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

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

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

SECOND SCHEDULE

[Section 17(1)]

(Form of Register)

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