



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

**CIVIL PROCEDURE CODE
(AMENDMENT)
ACT, No. 53 OF 1980**

[Certified on 11th December, 1980]

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**Civil Procedure Code (Amendment) Act,
No. 53 of 1980**

[Certified on 11th December, 1980]

L.D.—O. 10/80.

AN ACT TO AMEND THE CIVIL PROCEDURE CODE.

BE it 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 (Amendment) Act, No. 53 of 1980. Short title

2. Section 8 of the Civil Procedure Code (hereinafter referred to as the "principal enactment") is hereby repealed and the following new section substituted therefor:— Replacement of section 8 of Chapter 101.

"Procedure of action to be ordinarily regular. 8. Save and except actions in which it is by this Ordinance or any other law specially provided that proceedings may be taken by way of summary procedure, every action shall commence and proceed by a course of regular procedure, as hereinafter prescribed."

3. Section 86 of the principal enactment is hereby amended as follows:— Amendment of section 86 of the principal enactment.

(i) by the repeal of subsection (1) thereof; and

(ii) by the insertion, immediately after subsection (2) thereof, of the following new subsection:—

"(2A) At any time prior to the entering of judgment against a defendant for default, the court may, if the plaintiff consents, but not otherwise, set aside any order made on the basis of the default of the defendant and permit him to proceed with his defence as from the stage of default upon such terms as to costs or otherwise as to the court shall appear fit."

4. Section 88 of the principal enactment is hereby amended, by the insertion, immediately after subsection (2) thereof, of the following new subsection:— Amendment of section 88 of the principal enactment.

"(3) The provisions of sections 761 and 763 shall, *mutatis mutandis*, apply to and in relation to the execution of a decree entered upon default, where an order refusing to set aside such decree has been made."

Amendment
of section
192 of the
principal
enactment.

5. Section 192 of the principal enactment is hereby amended, by the substitution, for subsection (1) thereof, of the following new subsection :—

“(1) When the action is for a sum of money due to the plaintiff, the court may, in the decree order interest according to the rate agreed on between the parties by the instrument sued on, or in the absence of any such agreement at the rate of twelve *per centum* per annum to be paid on the principal sum adjudged from the date of the action to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the action, with further interest at such rate on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.”.

Replacement
of section
196 of the
principal
enactment.

6. Section 196 of the principal enactment is hereby repealed and the following new section substituted therefor :—

“Decree
when claim
in respect
of mesne
profits-from
date of
action is
allowed:

196. When the action is for the recovery of the possession of immovable property, yielding rent or other profit, the court may, whenever the prayer of the plaint asks for damages in respect of mesne profits or rent, provide in the decree for the payment of money in lieu of mesne profits or rent in respect of such property from the date of the institution of the action until the delivery of possession to the party in whose favour the decree is made, with interest thereon at such rate not exceeding twelve *per centum* as the court thinks fit.

Explanation :—“Mesne profits” of property mean those profits which the person in wrongful possession of such property actually received, or might, with ordinary diligence, have received therefrom.”

7. Section 213 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement
of section
213 of the
principal
enactment.

"Court may
give interest
on costs.

213. The court may give interest on costs at any rate not exceeding twelve *per centum* per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the action."

8. Section 222 of the principal enactment is hereby amended, by the insertion, immediately after subsection (2) thereof, of the following new subsection:—

Amendment
of section
222 of the
principal
enactment.

"(3) An application to execute a decree against the judgment-debtor as provided in subsection (2) shall be made, by petition supported by affidavit of the judgment-creditor setting out the material facts, to which application the judgment-debtor shall be made respondent. The court shall after inquiry, if satisfied that the decree should be executed against the judgment-debtor personally, grant such application."

9. Section 325 of the principal enactment is hereby amended, by the substitution, for subsection (2) thereof, of the following new subsection:—

Amendment
of section
325 of the
principal
enactment.

"(2) When a petition under subsection (1) is presented, the court may, upon the application of the judgment-creditor made by motion *ex parte*, direct the Fiscal to publish a notice announcing that the Fiscal has been resisted or obstructed in delivering possession of such property, or that the judgment-creditor has been hindered in taking complete and effectual possession thereof or ousted therefrom, as the case may be, by the judgment-debtor or other person, and calling upon all persons claiming to be in possession of the whole or any part of such property by virtue of any right or interest and who object to possession being delivered to the judgment-creditor to notify their claims to court within fifteen days of the publication of the notice."

Amendment
of section
326 of the
principal
enactment.

10. Section 326 of the principal enactment is hereby amended, by the substitution, for subsection (1) thereof, of the following new subsection :—

“(1) On the hearing of the matter of the petition and the claim made, if any, the court, if satisfied—

(a) that the resistance, obstruction, hindrance or ouster complained of was occasioned by the judgment-debtor or by some person at his instigation or on his behalf;

(b) that the resistance, obstruction, hindrance or ouster complained of was occasioned by a person other than the judgment-debtor, and that the claim of such person to be in possession of the property, whether on his own account or on account of some person other than the judgment-debtor, is frivolous or vexatious; or

(c) that the claim made, if any, has not been established, shall direct the judgment-creditor to be put into or restored to the possession of the property and may, in the case specified in paragraph (a), in addition sentence the judgment-debtor or such other person to imprisonment for a period not exceeding thirty days.”.

Replacement
of section
330 of the
principal
enactment.

11. Section 330 of the principal enactment is hereby repealed and the following new section substituted therefor :—

“How subsequent
obstruction
to be dealt
with.

330. Any subsequent resistance or obstruction to the execution of the writ or hindrance to the possession or ouster of the judgment-creditor within a year and a day of the delivery of possession—

(a) by the judgment-debtor or any other respondent to the petition under section 325, or

(b) where a notice under subsection (2) of section 325 has been duly published, by any person whosoever,

shall be punishable as a contempt of court.”.

12. Section 337 of the principal enactment is hereby amended as follows :—

Amendment
of section
337 of the
principal
enactment.

(i) by the substitution, for subsection (1) thereof, of the following new subsection :—

“(1) No application (whether it be the first or a subsequent application) to execute a decree, not being a decree granting an injunction, shall be granted after the expiration of ten years from—

(a) the date of the decree sought to be executed or of the decree, if any, on appeal affirming the same ; or

(b) where the decree or any subsequent order directs the payment of money or the delivery of property to be made on a specified date or at recurring periods, the date of the default in making the payment or delivering the property in respect of which the applicant seeks to execute decree.” ; and

(ii) by the insertion, immediately after subsection (2) thereof, of the following new subsection :—

“(3) Subject to the provisions contained in subsection (2), a writ of execution, if unexecuted, shall remain in force for one year only from its issue, but—

(a) such writ may at any time before its expiration, be renewed by the judgment-creditor for one year from the date of such renewal, and so on from time to time ; or

(b) a fresh writ may at any time after the expiration of an earlier writ be issued,

till satisfaction of the decree is obtained.”

13. Section 501 of the principal enactment is hereby repealed and the following new section substituted therefor :—

Replace-
ment of
section 501
of the
principal
enactment.

“This Chapter to apply to persons of unsound mind and mentally deficient persons.

501. (1) The provisions contained in this Chapter shall, *mutatis mutandis*, apply in the case of persons of unsound mind and mentally deficient persons, adjudged to be so under the provisions of this Ordinance or under any law for the time being in force.

(2) For the purposes of this section, "persons of unsound mind and mentally deficient persons", mean persons who have been so adjudged under the provisions of this Ordinance or under any law for the time being in force, or where there has been no such adjudication, persons of whom the court is satisfied, after inquiry, to be of unsound mind or mentally deficient and incapable of managing their own affairs."

Insertion of new section 580A in the principal enactment.

14. The following new section is hereby inserted immediately after section 580, and shall have effect as section 580A, of the principal enactment:—

Provisions applicable to mentally deficient persons.

580A. (1) The provisions contained in this Chapter, other than section 555 shall apply in the case of mentally deficient persons.

(2) For the purposes of this section, "mentally deficient persons", mean persons who are incapable of managing their own affairs by reason of being mentally ill, feeble, infirm or defective, though not adjudicated as persons of unsound mind in accordance with any law for the time being in force."

Replacement of section 662 of the principal enactment.

15. Section 662 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"When injunction may be granted.

662. Every application for an injunction for any of the purposes mentioned in section 54 of the Judicature Act, No. 2 of 1978, except in cases where an injunction is prayed for in a plaint in any action, shall be by petition, and shall be accompanied by an affidavit of the applicant or some other person having knowledge of the facts, containing a statement of the facts on which the application is based."

16. Section 745 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement
of section
745 of the
principal
enactment.

"Compulsory
judicial
settlement
of accounts
in cases of
persons of
unsound
mind,
mentally
deficient
persons and
minors.

745. A petition praying for the judicial settlement of the account of—

- (a) the manager of the estate of a person of unsound mind or mentally deficient person ;
- (b) the guardian of the person of a person of unsound mind or mentally deficient person ;
- (c) the curator of the estate of a minor ;
- (d) the guardian of the person of a minor ;
- (e) the next friend of a minor plaintiff ;
- (f) the guardian for the action of a minor defendant ;

and that such persons may be cited to attend the settlement thereof, may in every case where such person is required by law to file accounts, be presented to the court having jurisdiction, in the manner in the last preceding Chapter provided, by any of the following persons respectively namely:—

In cases falling under paragraphs (a) and (b) by the person of unsound mind or mentally deficient person, after he has been found by adjudication to have ceased to be of unsound mind or mentally deficient, or by any relative or friend of the person of unsound mind or mentally deficient person, or by the executor or administrator of a deceased person of unsound mind or mentally deficient person, or under paragraph (a) by the guardian of the person, and under paragraph (b) by the manager of the setate, of a person of unsound mind and mentally deficient person or by any public officer mentioned in section 556 ;

In cases falling under paragraphs (c), (d), (e), and (f)—

by the minor after he has attained majority, or by the executor or administrator of a deceased minor, or under paragraph (c) by the guardian of the person, and under paragraph (d) by the curator of the estate of a minor ;

And in any case by the successor of any such manager, curator, guardian, next friend, or guardian for the action. But in cases falling under paragraphs (b), (d), (e) and (f) proof must be adduced to the satisfaction of the court that the person so required to account has received money or property of the minor for which he is liable to account and has not accounted."

Replacement
of section
749 of the
principal
enactment.

17. Section 749 of the principal enactment is hereby repealed and the following new section substituted therefor :—

"Requisites
of petitions
relating to
persons of
unsound
mind,
mentally
deficient
persons,
minors, or
trustees.

749. Every petition by which an application is made to a District Court for the exercise of its powers over or in respect of persons of unsound mind, mentally deficient persons, minors or trustees, as the case may be, shall state expressly that the petitioner does not know of any person interested in the subject of the petition or in the person sought to be affected by the order prayed for in the petition, who is likely to entertain any objection thereto, other than those who are named as respondents in the petition."

Replacement
of section
752 of the
principal
enactment.

18. Section 752 of the principal enactment is hereby repealed and the following new section substituted therefor :—

"Security
from
managers
and
curators.

752. The District Court shall have the like power to make the person appointed manager of the estate of a person of unsound mind, or mentally deficient person, or the person appointed curator of a minor's estate, give security for the due administration of the estate as it has in the case of administrators of deceased persons estates."

19. Section 763 of the principal enactment is hereby amended as follows:—

Amendment
of section
763 of the
principal
enactment.

(i) by the renumbering of that section as subsection (1) thereof; and

(ii) by the insertion, immediately after the re-numbered subsection (1) of that section, of the following new subsection:—

“(2) The Court may order execution to be stayed upon such terms and conditions as it may deem fit, where—

(a) the judgment-debtor satisfies the court that substantial loss may result to the judgment-debtor unless an order for stay of execution is made, and

(b) security is given by the judgment-debtor for the due performance of such decree or order as may ultimately be binding upon him.”

20. Section 800 of the principal enactment is hereby repealed and the following new section substituted therefor:—

Replacement
of section
800 of the
principal
enactment.

“Sentences
to be
imposed
under this
Chapter.

800. The provisions of Article 105 (3) of the Constitution and sections 18 and 55 of the Judicature Act, No. 2 of 1978 shall, apply to the sentence of fine or imprisonment, as the case may be, that may be imposed on conviction for contempt under this Chapter by the various courts.”

21. The Second Schedule to the principal enactment is hereby repealed and the following new Schedule substituted therefor:—

Replacement
of the
Second
Schedule
to the
principal
enactment.

SECOND SCHEDULE

(Section 214)

Part 1

DISTRICT COURTS

Scale of costs and charges to be paid to Registered Attorneys in the District Courts as well between party and party as between Registered Attorney and Client.

	Class I	Class II	Class III	Class IV
	Under Rs. 1,500	Rs. 1,500 and under Rs. 5,000	Rs. 5,000 and under Rs. 10,000	Rs. 10,000 and under Rs. 100,000
Where the cause of action, title to land or property, value of estate or subject matter of the action is				
Conference with client and receiving instructions to sue, defend, intervene or interplead, to obtain or to oppose the grant of Letters of Administration or Letters of Guardianship or Probate, or to take any other proceedings provided for under this Ordinance	25 00	35 00	50 00	65 00
Proxy to Registered Attorney for any of the above purposes	10 00	15 00	20 00	25 00
Letter of Demand	20 00	25 00	30 00	40 00
Every necessary attendance on client in the progress of an action or proceeding	10 00	15 00	20 00	25 00
Every necessary attendance on Counsel	10 00	15 00	20 00	25 00
Every necessary attendance on the Judge, Registrar, Fiscal, Justice of the Peace, Commissioner for Oaths, adverse party or his Registered Attorney or Counsel or any other person in the progress of an action or proceeding	10 00	15 00	20 00	25 00
Every necessary attendance on Registrar of Lands or any other Officer of a Government Department, Corporation, Board or any other authority in the progress of an action or proceeding	10 00	20 00	30 00	40 00
Drawing plaint, answer, replication, plea or any other pleading, petition or application	25 00	35 00	50 00	65 00
Preparing written instructions for Counsel to draw or settle the above and attendance therewith	20 00	25 00	30 00	40 00
Attending Court and filing plaint, answer, replication, plea or any other pleading, petition or application	10 00	15 00	20 00	25 00
Making and serving copy of same or translation thereof for service, per folio*	1 00	1 50	1 50	2 00
Making copies of documents to be filed with pleading, or for service on parties, per folio*	1 00	1 50	1 50	2 00
Drawing, summons, notice, subpoena, writ or other process, order of Court, decree, or judgment	3 00	4 00	6 00	10 00
Making copy or translation thereof	1 50	2 00	3 00	4 00
Attending Registrar to get the same signed	10 00	15 00	20 00	25 00
Drawing motions and other ordinary applications when necessary	5 00	10 00	15 00	20 00
Every necessary attendance at Court Offices and Record Room to make all necessary applications, to file all motions, to peruse orders thereon and to search for return to summons or notice or any other process	3 00	5 00	6 00	10 00
Attending Court without Counsel to support or oppose application or motion for judgment or any other special motion or application	25 00	35 00	50 00	65 00
Attending Court to support or oppose all necessary ordinary applications or motions	25 00	35 00	50 00	65 00
Drawing and fair-copying affidavit	15 00	20 00	30 00	65 00
Drawing decrees, applications for execution, probate, Letters of Administration, interrogatories, cross interrogatories, commissions, special case, injunction, sequestration, proclamation bonds, reference citations, inventories and accounts	15 00	25 00	40 00	50 00

* A folio to consist of 120 words.

	<i>Class I</i>	<i>Class II</i>	<i>Class III</i>	<i>Class IV</i>
<i>Where the cause of action, title to land or property, value of estate or subject matter of the action is</i>	<i>Under Rs.1,500</i>	<i>Rs 1,500 and under Rs.5,000/-</i>	<i>Rs.5,000 and under Rs.10,000</i>	<i>Rs.10,000 and under Rs.100,000</i>
Drawing brief for Counsel and faircopy, per folio*	..	1 00 ..	1 50 ..	1 50 .. 2 00
Making copy of pleadings and documents to accompany brief, per folio*	..	1 00 ..	1 50 ..	1 50 .. 2 00
Where two or more Counsel are engaged, for drawing second brief (no charges for further brief), per folio*	..	1 00 ..	1 50 ..	1 50 .. 2 00
Attending Court with Counsel on trial, if cause argued or heard	..	50 00 ..	70 00 ..	100 00 .. 125 00
Attending Court with Counsel on trial, if cause adjourned, postponed or struck off	..	30 00 ..	50 00 ..	80 00 .. 100 00
Attending Court without Counsel on trial and conducting cause	..	50 00 ..	100 00 ..	150 00 .. 190 00
Attending Court without Counsel on trial, if cause adjourned, postponed or struck off	..	30 00 ..	50 00 ..	80 00 .. 100 00
Where judgment is differed, attending Court to hear it	..	25 00 ..	35 00 ..	50 00 .. 65 00
Attending arbitration without Counsel, each sitting (no fees after sixth sitting)	..	50 00 ..	100 00 ..	150 00 .. 190 00
Attending arbitration with Counsel, each sitting (no fees after sixth sitting)	..	30 00 ..	50 00 ..	80 00 .. 100 00
Attending Commissioner to examine or cross-examine witnesses on local examination of accounts or for any other purpose with Counsel	..	20 00 ..	30 00 ..	50 00 .. 65 00
Attending Commissioner as above without Counsel	..	40 00 ..	50 00 ..	70 00 .. 90 00
Drawing Bill of Costs and fair copy	..	1 50 ..	30 00 ..	50 00 .. 50 00
		<i>*per folio</i>	<i>irrespective of the number of folios</i>	<i>irrespective of the number of folios</i>
Attending taxation	..	10 00 ..	20 00 ..	30 00 .. 40 00
Perusing and considering papers, exhibits, or documents furnished or used in any action or proceeding by the adverse party or furnished by a party to his own Registered Attorney for the purpose of being used as evidence in any action or proceeding	..	Such sum as the Registrar shall consider fair and reasonable subject to review and appeal as provided in this Ordinance.		
Examining witnesses preparatory to trial or for instructions for brief (per witness)	..	10 00 ..	20 00 ..	30 00 .. 40 00
For every necessary letter vouched by letter book, exclusive of postage	..	5 00 ..	10 00 ..	15 00 .. 20 00

*A folio to consist of 120 words.

Maps, Surveys, Plans or models, when necessary, such sum as the Registrar shall deem reasonable, subject to review and appeal.

Witnesses' expenses, as the Court may determine.

All necessary instructions, applications, and motions and all necessary attendance at consultations, and copies of documents and all fees and charges not otherwise provided for (including letters) such sums as the Registrar shall deem reasonable, subject to review and appeal.

In all actions involving Rs. 100,000 and over the taxable charges to be one-third (1/3) higher than in Class IV.

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PART II

Scale of fees to be paid to Counsel in the District Courts.

	I	II	III	IV
Where the cause of action, title to land or property value of estate or subject matter of the action is	Under Rs.1,500	Rs.1,500 and under Rs.5,000	Rs.5,000 and under Rs.10,000	Rs.10,000 and over
Retainer	30 00	50 00	70 00	100 00
Advising action, defence or appeal ..	30 00	50 00	70 00	100 00
Drawing, perusing, settling, and signing any pleading application or petition ..	50 00	70 00	100 00	200 00 to 300 00
Drawing, perusing and setting special case ..	50 00	70 00	100 00	200 00
Drawing, perusing, and settling interrogatories, decree etc. ..	50 00	70 00	100 00	150 00
Consultation fee ..	50 00	70 00	100 00	200 00
Supporting or opposing any special motion or application ..	50 00	70 00	100 00	200 00
Brief fee on trial or argument ..	100 00	150 00	200 00	300 00 to 1000 00
Brief fee where trial or argument is resumed ..	50 00	100 00	150 00	200 00 to 700 00

N.B. (1) The fee of a Junior Counsel will not be allowed where two Counsel are engaged in Classes I and II.

(2) No fees will be allowed for a third Counsel in any class.

(3) The brief fee of a Junior Counsel, where two Counsel are engaged will be half of the Senior Counsel's brief fee.

The Registrar may allow any charges or fees as he shall deem reasonable (not otherwise provided for) on special application being made to him, subject to review and appeal as provided in this Ordinance.

PART III

Court of Appeal

In Appeal

Counsel's fees

Appeals where value of action is Rs. 1,500/- or under :—

Brief fee on argument

Rs. 100 00

Appeals where value of action is over Rs. 1,500/-

Retainer

Rs. 100 00

Consultation fee

Rs. 100 00 to 300 00

Making or opposing any special motion

Rs. 100 00 to 300 00

Brief fee

Rs. 200 00 to 2000 00

Drawing, perusing, settling and signing any application or petition

Rs. 100 00 to 300 00

Registered Attorney's Fees as well between party and party as between Registered Attorney and client.

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	<i>Class I Rs.1,500 and under</i>	<i>Class II Rs.5,000 and under</i>	<i>Class III Rs.10,000 and under</i>	<i>Class IV Rs.100,000 and under</i>
Proxy	7 50	10 00	15 00	20 00
Instructing Counsel to make or oppose any special motion, or for advice on appellant's or respondent's case	50 00	75 00	100 00	125 00
Drawing brief for Counsel or any bond, affidavit, petition or application and fair copy, per folio* ..	2 50	5 00	5 00	7 00
Close copy of pleading, evidence and documents to accompany brief, per folio*	1 25	1 25	1 25	1 50
Attending Court	50 00	75 00	100 00	125 00
Every necessary attendance on Registrar	25 00	25 00	25 00	35 00
Drawing of Bill of Costs	22 50	22 50	22 50	30 00
Servicing copy with notice of taxation	7 50	7 50	7 50	10 00

Note 1. In all actions involving over Rs. 100,000/- the taxable charges to be one third (1/3) higher than in Class IV.

Note 2. The Registrar may allow any charges or fees not specially provided for, as he shall deem reasonable on special application being made, subject to an appeal to the Court.

*A folio to consist of 120 words.

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