



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

**CIVIL PROCEDURE CODE (AMENDMENT)
ACT, No. 14 OF 1997**

[Certified on 22nd July, 1997]

Printed on the Order of Government

Published as a Supplement to Part II of the **Gazette of the Democratic
Socialist Republic of Sri Lanka** of July 25, 1997

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA

TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO 7

Price : Rs. 8.00

Postage : Rs. 4.10

[Certified on 22nd July , 1997]

L. D.— 0. 73/95.

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. 14 of 1997 and shall come into operation on such date, as the Minister may by Order published in the Gazette, appoint.

Short title and date of operation.

2. Section 55 of the Civil Procedure Code (hereinafter referred to as the “principal enactment”) is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :—

Amendment of section 55 of Chapter 101.

“(1) Upon the plaint being filed and the copies of concise statements required by section 49 presented, the court shall order summons in the form No. 16 in the First Schedule to issue, signed by the Registrar of the court, requiring the defendant to answer the plaint on or before a day to be specified in the summons, such day, being a day not later than three months from the date of the institution of the action in court.”.

3. Sections 59, 60 and 61 of the principal enactment are hereby repealed and the following sections substituted therefor :—

Replacement of sections 59, 60 and 61 of the principal enactment.

“Service of summons to be by registered post.

59. (1) Summons shall ordinarily be served by registered post.

(2) (a) In the case of a corporation, or incorporate body summons may be delivered to the registered office or if there is no registered office, the principal place of business of such corporation or body.

(b) Where the defendant is a public officer the court may send summons by registered post to the head of the department in which the defendant is employed, and it shall be the duty of such head of department to cause the summons to be served personally on the defendant.

(c) Where the court is *prima facie* satisfied that the defendant is in the employment of another person, the court may send the summons to the employer at his place of business or, where the employee is a company or corporation, to any secretary, manager or other like officer of the company or corporation, and it shall be the duty of such employer or officer, as the case may be, to cause the summons to be served personally on the defendant.

(3) In every case in which the summons are sent by registered post to a person other than the defendant, the court shall also forward a duplicate of such summons, and it shall be the duty of the head of department, employer or officer, as the case may be, to return such duplicate to the court forthwith with an acknowledgment of the summons by the defendant or with a statement of the service endorsed thereon and signed by the person effecting the service and countersigned by the person to whom the summons had been forwarded by court if he has not himself effected the service.

(4) Where a defendant appears in court in person on summons being served on him in the manner referred to above, he shall produce his national identity card or a valid passport, as the case may be, and it shall be the duty of the judge to satisfy himself that the person who has appeared before him and the person on whom summons have been served in the manner aforesaid, is one and the same person.

(5) Where a defendant is represented by a registered attorney, the attorney shall in the proxy tendered on behalf of the defendant, state the number of the identity card or the passport, as the case may be, of the defendant and shall also make an endorsement thereon certifying the identity of such defendant, where a proxy is tendered on behalf of a company or a body corporate it shall be tendered under the seal of such company or the body corporate, as the case may be.

(6) In this section—

“head of department”—

- (a) when used with reference to a member of any unit of the Sri Lanka Army, Navy or Air Force, means the Commanding Officer of that unit ;
- (b) when used with reference to a person employed in a local authority, if the local authority is a Municipal Council, means the Municipal Commissioner of that Council ; if the local authority is an Urban Council or a Preadeshiya Sabha, means the Chairman of that Council or Sabha ;
- (c) when used with reference to any other public officer means the head of the department of Government in which such person is employed ; and

“national identity card” when used with reference to any person, means the identity card issued to such person under the Registration of Persons Act, No. 32 of 1968.

Personal service.

60. (1) The court shall, where it is reported that summons could not be effected by registered post or where the summons having been served and the defendant fails to appear, direct that such summons be served personally on the defendant by delivering or tendering to him the said summons through the Fiscal or the Grama Niladhari within whose division the defendant resides or in any case where the plaintiff is a lending institution within the meaning the Debt Recovery (Special Provisions) Act, No. 2 of 1990, through the Fiscal or other officer authorized by court, accompanied by a precept in form No. 17 of the First Schedule. In the case of a corporation summons may be served personally by delivering or tendering it to the secretary or like officer or a director or the person in charge of the principal place of business of such corporation.

(2) If the service referred to in the preceding provisions of this section cannot by the exercise of due diligence be effected, the Fiscal or Grama Niladhari shall affix the summons to some conspicuous part of the house in which the defendant ordinarily resides or in the case of a corporation or unincorporate body, to the usual place of business or office of such corporation or such body and in every such case the summon shall be deemed to have been duly served on the defendant.

Proof of service.

61. When a summons is served by registered post, the advice of delivery issued under the Inland Post Rules, and the endorsement of service, if any, and where the summons is served in any other manner, and affidavit of such service shall be sufficient evidence of the service of the summons and of the date of such service, and shall be admissible in evidence and the statements contained therein shall be deemed to be correct unless and until the contrary is proved.'

4. Section 62 of the principal enactment is hereby amended by the substitution for the words "shall fix a day on or before which", of the words "shall fix a day, not being a day later than three months from the day on which the defendant was earlier required to answer the plaint, on or before which,".

Amendment of section 62 of the principal enactment.

5. Section 209 of the principal enactment is hereby repealed and the following section substituted therefor :—

Replacement of section 209 of the principal enactment.

"Court always to have power to give or reserve costs.

209. When disposing of any application or action under this Ordinance, whether of regular or of summary procedure, the court may, unless elsewhere in this Ordinance otherwise directed, give to either party, the costs of such application or action, or may reserve the consideration of such costs for any future stage of the proceedings. The court may in its order, fix the amount of the costs of such application or action, so however, that the amount so fixed shall not be less than fifty *per centum* of the amount of costs that may be given in an application or action of that category, at such rates as may be prescribed for the purposes of section 214, and not more than two hundred *per centum* of the amount of costs that may be given in an application or action of that category, at such rates as may be prescribed for the purposes of section 214. Any order for the payment of costs only, is a decree for money within the provisions of section 194 as to payments by instalments."

6. Section 210 of the principal enactment is hereby repealed and the following section substituted therefor :—

Replacement of section 210 of the principal enactment.

"Court shall direct by whom costs are to be paid and estimate value in certain cases.

210. The decree or order shall direct by who, the costs of each party are to be paid, and whether in whole or in what part or proportion. The court shall, in decrees entered in such classes of action as are prescribed, give its estimate of the value of the action, and such estimate shall be deemed to be the value of the action, for the purposes of applying the rates prescribed for the purposes of section 214, to that action."

Amendment of section 211 of the principal enactment.

7. Section 211 of the principal enactment is hereby amended as follows :—

- (1) by the renumbering of that section as subsection (1) thereof ; and
- (2) by the addition immediately after the renumbered subsection (1) of the following new subsection :—

“(2) Without prejudice to the generality of the powers of the court under subsection (1), the court may give costs to a party, in the case of any frivolous or vexatious action or application or defence by the other party or in the case of expense to such party, occasioned by the delay or default of the other party or by the making of any unnecessary or unreasonable application by the other party, so however, that the costs so ordered shall in no case exceed five hundred *per centum* of the costs that may be ordered in an application or action of that category, at the rates prescribed for the purposes of section 214.”.

Replacement of section 213 of the principal enactment.

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

“Court may give interest on costs.

213. The court may give interest on costs at the legal rate per annum as specified in section 192 of the Ordinance, calculated from the date of the decree, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject matter of the action.”.

Replacement of section 214 of the principal enactment.

9. Section 214 of the principal enactment is hereby repealed and the following section substituted therefor :—

“Costs to be taxed.

214. All bills of costs, whether between party and parties, or between registered attorney and client, shall be taxed by the Registrar of the court in either case according to such

rates as may be prescribed. If either party is dissatisfied with this taxation, the matter in dispute shall be referred to the court for its decision, and the decision of the court (except when it is the decision of the Court of Appeal) be liable to an appeal to the Court of Appeal.”.

10. The following new section is hereby inserted immediately after section 417 of the principal enactment and shall have effect as section 417A of that enactment :—

Insertion of new section 417A in the principal enactment.

“ Amount of security for payment of costs.

417A. The security for payment of costs fixed by order made under section 416 or 417 shall in no case exceed the aggregate of the following :—

- (a) the total costs that can be ordered in an action of that category, at the rates prescribed for the purposes of section 214; and
- (b) five hundred thousand rupees to meet incidental expenses, such as expenses that may be incurred in procuring the evidence and attendance of witnesses living abroad.”.

11. Sections 705A and 705 B of the principal enactment are hereby repealed.

Repeal of sections 705A and 705B of the principal enactment

12. Section 756 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :—

Amendment of section 756 of the principal enactment.

“(1) The security which is required to be deposited by a party appellant shall be made by way of deposit of a sum of money or hypothecation of immovable property, to cover the costs of appeal and to no greater amount :

Provided that where money is deposited as security, the same shall be deemed to have been hypothecated in favour of the Registrar of the court, for the payment of all costs which shall be incurred and taxed in prosecution of such appeal if the appellant is decreed to pay the same.”.

Addition of new section 840 in the principal enactment.

13. The following new section is hereby added immediately after section 839 of the principal enactment and shall have effect as section 840 of that enactment :—

“Regulations.

840. (1) The Minister may make regulations for, and in respect of all or any of the matters, for which regulations are required or authorised to be made by this Ordinance, or which are required by this Ordinance to be prescribed.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation shall, as soon as convenient after publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded, shall be published in the Gazette.”.

Amendment of First Schedule to the principal enactment.

14. The First Schedule to the principal enactment is hereby amended by the repeal of form No.129 of that Schedule.

15. The Second Schedule to the principal enactment is hereby repealed.

Repeal of Second Schedule to the principal enactment.

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

Sinhala text to prevail in case of inconsistency.

Annual subscription of English Bills and Acts of the Parliament Rs. 885 (Local), Rs. 1,180 (Foreign), payable to the SUPERINTENDENT, GOVERNMENT PUBLICATIONS BUREAU, No. 32, TRANSWORKS HOUSE, LOTUS ROAD, COLOMBO 01 before 15th December each year in respect of the year following.