

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

Part II of November 04, 2022

SUPPLEMENT

(Issued on 04.11.2022)



**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**

*Ordered to be published by the Minister of Justice, Prison Affairs and
Constitutional Reforms*

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA

TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO 5

Price : Rs. 50.00

Postage : Rs. 35.00

This Gazette Supplement can be downloaded from www.documents.gov.lk



*Recovery of Possession of Premises
Given on Lease*

L.D.-O. 66/2021

AN ACT TO PROVIDE FOR THE PROCEDURE RELATING TO THE RECOVERY OF
POSSESSION OF PREMISES GIVEN ON LEASE UNDER A LEASE AGREEMENT;
TO REGULATE THE RECOVERY OF ARREARS OF LEASE RENTALS, SERVICE
CHARGES AND LIQUIDATED DAMAGES; AND TO PROVIDE 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 Recovery of Possession Short title
of Premises Given on Lease Act, No. of 2022.

5

PART I

INSTITUTION OF ACTION

2. (1) Where any premises has been given on lease by a lessor, such lessor may, subject to the provisions of subsection (2), institute action for the recovery of possession of such premises in the Court having jurisdiction over the local limits within which-

Action by the lessor to recover possession of a premises given on lease

(a) the premises given on lease is situated;

(b) the lessee resides;

(c) the cause of action arises; or

15 (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 subsection (2) of section 5 unless possession of such premises has been given to the lessee by a lease agreement.

20

2 *Recovery of Possession of Premises*
 Given on Lease

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 premises -

Grounds for
institution of
action

- 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 the said agreement, where the lessor has issued a notice of termination of the lease agreement.

4. (1) The lessor (hereinafter referred to as the “plaintiff”) shall institute an action by presenting a plaint in the form specified in the Civil Procedure Code and shall file with

Documents
to be filed

15 such plaint-

- (a) an affidavit to the effect that the possession of the premises given on lease which is the subject matter of the action (hereinafter referred to as the “premises”) is lawfully due to the plaintiff from the lessee (hereinafter referred to as the “defendant”);
- 20 (b) a draft decree *nisi* together with the applicable stamps as required by law, for the decree *nisi* and service thereof; and
- (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.
- 25

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

30

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

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

10 **5.** (1) When the action is supported in Court for the issuance of a decree *nisi* in terms of section 4, if it appears to the Court that – Entering a
decree *nisi*
by the Court

(a) the lease agreement produced –

15 (i) is properly executed and duly stamped as required by law; and

20 (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 by the executing parties as stated in the attestation by notary public, as the case may be; and

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

the Court shall enter 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:-

4 *Recovery of Possession of Premises
Given on Lease*

- (a) the arrears 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 damages to be awarded under subsection (2) of section 5, 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. Liquidated damages
- (2) Where the parties have not agreed upon the liquidated damages payable in the lease agreement for the grounds of action specified in section 3, 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.
- 7.** A service charge shall not be ordered unless the defendant has agreed to pay such service charge in the lease agreement, either directly to the plaintiff or to another person on behalf of the plaintiff. Payment of service charge

PART II

SERVICE OF DECREE *Nisi*

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

Service of
decree *nisi*
ordinarily to
be by
registered
post

(2) The decree *nisi* shall be ordinarily served on the
defendant by registered post at the premises or at the address
10 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.

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

Service of
decree *nisi*
by 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

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.

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

Service of
decree *nisi*
on a public
officer

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

- 5 (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 Unit;
- (b) 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;
- 15 (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 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.

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

Date to be specified in the decree *nisi* for the defendant to apply to the Court for leave to appear

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

PART III

5 DEFENDANT TO MAKE AN APPLICATION TO APPEAR AND SHOW CAUSE

12. (1) In an action instituted under this Act, the defendant shall not appear and show cause against the decree *nisi* unless he first obtains leave to appear and show cause from the Court which issued the decree *nisi*. Defendant to appear and show cause only upon 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 *prima facie* 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.

13. Where the Court grants leave to appear and show
30 cause under section 12, the Court shall order the defendant to furnish security which is not less than— Security to be furnished by the defendant

- (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
- 10 (c) the aggregate sum due to the plaintiff as liquidated damages prayed for and specified in the decree *nisi*, from the expiry, or effective date of termination of the lease agreement upto 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 under section 13 shall be deposited in cash in the Court within two weeks from the date of the order. Security ordered to be deposited within two weeks
- (2) The Registrar of the Court shall cause to issue a 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-
- (a) fails to make an application for leave to appear and show cause on the date specified in the decree *nisi* under subsection (1) of section 11; Making the decree *nisi* absolute, by the Court

10 *Recovery of Possession of Premises*
 Given on Lease

- 5 (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 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:

15 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 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 not lie against the decree *nisi* which has been made absolute due to the defendant’s failure to make an application in terms of paragraph (a) of section 15, but it shall be competent for Court, within a period not later than one year after the decree absolute was entered, to entertain an application by the
25 defendant by way of petition and affidavit filed against such decree absolute, to have it set aside on the ground that-

Order making a decree *nisi* absolute on default not appealable, but may be set aside

- (a) the defendant 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.

(2) In addition to the grounds referred to in 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

(b) the defendant has disclosed a defence which is
15 *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 shall then 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.

PART IV

PROCEDURE AFTER GRANTING LEAVE TO APPEAR AND SHOW CAUSE

17. (1) Where the Court-

Procedure
where leave
to appear and
show cause is
granted

- 5 (a) grants leave to appear and show cause against
 a decree *nisi* to the defendant under
 subsection (3) of section 12 and the security
 ordered is deposited within the specified
 period; or
- 10 (b) setting aside the decree absolute, grants leave
 to appear and show cause to the defendant
 under subsection (3) of section 16 and the
 security ordered to be furnished is deposited
 within the specified period,

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

20 (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
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.

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

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

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 not prevent any order being made by consent of the plaintiff and the defendant on
5 the footing of the decree *nisi*.

18. In any proceedings under this Act, the Court may order that the originals of the lease agreement or other document copies of which were filed with the plaint or on which the action is founded, be made available for
10 examination by the Court when the action is supported in Court. Notwithstanding anything to the contrary in the Civil Procedure Code, such agreement or document shall be returned to the plaintiff after such examination.

Original documents filed to be made available for examination

19. (1) Where, after entering a decree *nisi* -
15 (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 was dismissed on the grounds of such wilful
20 suppression or non-disclosure of material facts,

Award of compensation

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.

14 *Recovery of Possession of Premises*
 Given on Lease

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

Surrender of possession of the premises by the defendant, &c

(2) Notwithstanding anything to the contrary contained
10 in the succeeding provisions of this Act, the decree absolute referred to in subsection (1) shall operate 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.

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

Discharge of a decree *nisi* or dismissal of an action not to bar any subsequent action

PART V

PROCEDURE AFTER MAKING THE DECREE *NISI* ABSOLUTE

25 22. (1) Subject to an order of the 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 subsection (3) of section 225 and section 323 of the Civil Procedure Code, and the same
30 shall be executed fourteen days after the date of order making the decree absolute, without any further notice to the defendant.

Decree absolute deemed to be a writ of execution

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

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

(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 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 or an application made by the defendant, it shall call upon the defendant to furnish a security in cash for the satisfaction of 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 considered all the circumstances of the case, in the event the main appeal or application is dismissed:

Provided that no such stay order shall be issued unless sufficient notice has is given to the plaintiff or his registered attorney.

23. (1) If the Fiscal is resisted or obstructed by any person while executing a writ referred to in section 22, the Fiscal 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 why he should not be dealt with for contempt of Court occasioned by such resistance or obstruction.

Resistance
deemed to be
contempt

16 *Recovery of Possession of Premises*
 Given on Lease

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

- 5 (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
- 10
- (ii) the claim notified is found by the Court to have been made by a person 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.
- 15

(b) Any person who commits contempt of court under paragraph (a) shall be liable to a fine not exceeding rupees

20 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

25 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 defendant or his legal representative shall not place in possession a third party in the premises in any manner whatsoever after the decree *nisi* entered in the action is served on such defendant or his legal representative, and such act

35 shall amount to contempt of Court:

Change of possession or *status quo* of the premises by the defendant after institution of action

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

(2) It shall be the duty of the defendant or his legal representative to 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 representative shall not
5 change the *status quo* of the premises without an order 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
10 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
20 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

25. (1) Any person aggrieved by-
30 (a) an order making a decree *nisi* absolute by refusing an application made by the defendant 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;
- Preferring
appeals
against an
order of the
Court

18 *Recovery of Possession of Premises*
 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
17 either 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.

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

15 (3) Where the Appeal Court allows an appeal setting aside
a decree absolute and where the writ has already been
executed under section 22 of this Act, the Appeal Court
shall enter a decree in favour of the appellant awarding
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 application to the Supreme Court.

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

PART VII

MISCELLANEOUS PROVISIONS

26. In any matter or question of procedure not provided for in this Act, the procedure laid down in the Civil Procedure 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.

*Casus
omissus*

27. Where any form to be used for the purposes of this Act has not been specified in this Act, such form as may be required, may be prescribed by the Minister for such purpose.

Forms

28. (1) Notwithstanding anything to the contrary in any other written law, in an action instituted under this Act, if the defendant has defaulted the settlement of any payment due and payable by him under the lease agreement by way of service charge or part thereof or any utility bills or part thereof, from the date of the plaint until the date of writ of execution, the plaintiff shall make an application in the same action within a period of three months from the date of execution of writ and delivery of vacant possession of the 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.

Recovery of
unsettled
utility bills or
service
charges due
as at the time
of execution
of the decree

(2) The Court, on being satisfied of the contents contained 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.

(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.

15 **29.** (1) There shall be maintained a special register in the form specified in the Third Schedule in every Court for actions instituted under this Act and such actions shall be assigned a number distinctive from other actions. A special register and special inquiry roll 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 lease agreements shall, in so far as they are not inconsistent with the provisions of this Act, apply to lease agreements governed by this Act. Applicability of other laws

- 31.** (1) The provisions of this Act shall be applicable to any lease agreement, notwithstanding that such lease agreement has been entered into and executed prior to the date of commencement of this Act. This Act to be applicable for lease agreements executed prior to the commencement of this Act
- 5 (2) Where such lease agreement has expired or terminated prior to the date of commencement of this Act, the lessor 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 not entered into a fresh lease agreement with the lessee.
- 32.** Notwithstanding anything to the contrary in any other written law, where a lessor has instituted an action for the recovery of the possession of a premises and such action is
15 pending on the date of commencement of this Act, such 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. Actions pending on the date of commencement of this Act
- 33.** The provisions of this Act shall be in addition to and
20 not in derogation of any other remedy that may be available 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. Saving other remedies
- 25 **34.** (1) Nothing in the Rent Act, No. 7 of 1972 shall apply to, or in relation to, a lease agreement executed on or after the date of commencement of this Act. Non-applicability of the Rent 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.
- 35.** Where any appointment is made in substitution of a party as his legal representative under Chapter XXV of the Civil Procedure Code, the person so appointed shall be treated as a party to the action, and every order, decree *nisi* Effect of legal representative being made a party

or decree absolute made or 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 be enforceable
5 against such substituted party.

36. Where an offence under this Act is committed by a body of persons, then- Offences by
a body of
persons

- 10 (a) if that body of persons is a body corporate, every
director, manager or secretary of that body
corporate;
- (b) if that body of persons is a firm, every partner of
that firm, and
- 15 (c) if that body of persons is an unincorporated body,
every individual who is a member of such
unincorporated body,

shall be deemed to have committed that offence:

20 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
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.

25 **37. (1)** The Minister may, for the purpose of giving effect Regulations
to the principles of this Act, make regulations in respect of
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.

30 (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) (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*.

38. In this Act, unless the context otherwise requires- Interpretation

10 “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 “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;

25 “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;

30 “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;

24 *Recovery of Possession of Premises*
 Given on Lease

5 “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, 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;

15 “premises” means any building or part of a building together with the land appertaining thereto and includes a bare land without a building or a part of a multi-storied building;

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

 “process officer” means-

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

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

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

39. 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

FIRST SCHEDULE

[Section 5]

FORM OF DECREE *NISI*
(Title.)

This action coming on for disposal before (*name and office of Judge*) on theday 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 defendant*), 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);

- (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 Fiscal of theProvince to enter and to have possession of the premises described in the Schedule hereto, to eject the above-named defendant, his servants, 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 theProvince 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.

Recovery of Possession of Premises 27
Given on Lease

The Schedule of the premises above referred to

(Signed).....
(Name and office of Judge)

On thisday 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 of the 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.

28 *Recovery of Possession of Premises
Given on Lease*

By Order of Court,

(Signed)
Registrar,

District Court of

On thisday of....., 20.....

THIRD SCHEDULE

[Section 29]

FORM OF REGISTER

No. of action	Name of plaintiff	Name of defendant	Premises in suit	Date of decree <i>nisi</i>	Date of decree absolute/ discharge	Date of satisfaction of decree	Any other matter

