

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

Part II of May 03, 2024

SUPPLEMENT

(Issued on 03.05.2024)



CIVIL PROCEDURE CODE (AMENDMENT)

A

BILL

to amend the Civil Procedure Code (Chapter 101)

*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. 36.00

Postage : Rs. 150.00

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



STATEMENT OF LEGAL EFFECT

Clause 2 : This clause amends section 5 of the Civil Procedure Code (Chapter 101) (hereinafter referred to as the “principal enactment”) and the legal effect of the section as amended is to insert the definition of the expression “electronic”.

Clause 3 : This clause amends section 9 of the principal enactment and the legal effect of the section as amended is to allow the institution of actions in the court within the local limits of the jurisdiction where a party plaintiff or party defendant resides.

Clause 4 : This clause amends section 27 of the principal enactment and the legal effect of the section as amended is to set out the requirement of the contents and the manner of an appointment of a registered attorney.

Clause 5 : This clause amends section 55 of the principal enactment and the legal effect of the section as amended is to require the furnishing of a memorandum substantially in the Form No. 16A of the First Schedule of the Code and set out the manner of serving a notice or other legal document.

Clause 6 : This clause replaces section 59 of the principal enactment and the legal effect of the amendment is to make provisions for the service of summons.

Clause 7 : This clause replaces section 60 of the principal enactment and the legal effect of the amendment is to include certain new provisions for the personal service of summons.

Clause 8 : This clause replaces section 61 of the principal enactment and the legal effect of the amendment is to make provisions for proof of service of summons.

Clause 9 : This clause replaces section 66 of the principal enactment and the legal effect of the amendment is to make provisions for service of summons on agents or affixing on immovable property.

Clause 10 : This clause replaces section 68 of the principal enactment and the legal effect of the amendment is to make provisions for service on a defendant who is in jail.

Clause 11 : This clause amends section 70 of the principal enactment and is consequential to the amendments made to section 55.

Clause 12 : This clause inserts new section 71A to the principal enactment and the legal effect will be to make provisions for the service of orders of court.

Clause 13 : This clause amends section 86 of the principal enactment to provide for a defendant at any time after the case is fixed for *ex-parte* trial against the defendant for default or any time after the decree is entered against him for default but without the service of the decree on him to make application to court justifying reasonable grounds for such default.

Clause 14 : This clause amends the form No.7, No.16A, and No. 17 in the First Schedule to the principal enactment and is consequential to the amendments made to sections 27, 55, 60 and 71A of the principal enactment.

Civil Procedure Code (Amendment)

L.D.-O. 72/2021

AN ACT TO AMEND THE CIVIL PROCEDURE CODE (CHAPTER 101)

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. of 2024. Short title

5 2. Section 5 of the Civil Procedure Code (Chapter 101) (hereinafter referred to as the “principal enactment”) is hereby amended by the insertion immediately after the definition of the expression “decree”, of the following new definition:- Amendment of section 5 of Chapter 101

10 ““electronic” shall have the same meaning assigned to it by the Electronic Transactions Act, No.19 of 2006;”.

3. Section 9 of the principal enactment is hereby amended by the repeal of paragraph (a) thereof, and the substitution therefor of the following new paragraph: - Amendment of section 9 of the principal enactment

15 “(a) a party plaintiff or a party defendant resides; or”.

4. Section 27 of the principal enactment is hereby amended as follows: - Amendment of section 27 of the principal enactment

(1) in subsection (1) thereof-

20 (a) in paragraph (b) by the substitution, for the words “party whom he represents; and”, of the words “party whom he represents;”; and

(b) by the repeal of paragraph (c) thereof, and the substitution therefor of the following new paragraphs: -

2 *Civil Procedure Code (Amendment)*

“(c) include an electronic mail address and a mobile phone number to which service of any process, notice or any other legal documents may also be served on a registered attorney;

5 (d) contain a memorandum substantially in the Form No. 16A of the First Schedule in duplicate setting out the address, mobile phone number and the electronic mail address, if any, of such party which shall be
10 considered as the registered address, the registered mobile phone number and the registered electronic mail address, respectively of such party. The registered attorney shall with such memorandum tender
15 to the Registrar stamps to the value required to cover cost of service of such notices or other legal document by registered post or the cost of courier service or service through electronic means;”;

20 (2) by the insertion immediately after subsection (2) of the following new subsection:-

“*(2A) (a)* Where a party is represented by a registered attorney, such attorney shall in the
25 appointment, state the national identity card number, passport number or any other mode of identification, as the case may be, of the party and shall also make an endorsement thereon certifying the identity of such party. Where the party is a
30 company or a body corporate the appointment shall be made under the seal of such company or a body corporate as the case may be.

(b) In the event a person who resides outside Sri Lanka is unable to meet his registered attorney to sign the appointment under subsection (1), such
35 appointment shall be signed in the presence of any of the following authorized persons who shall certify the identity of such person: -

(i) an Attorney-at-Law, a solicitor, a lawyer or a Notary of the country where such party resides; or

5 (ii) the High Commissioner, the Ambassador, a diplomatic officer or a consular officer of the Sri Lankan High Commission, Embassy or Consular Office in the country in which such party resides.

10 (c) In the case of any delay or any difficulty to produce the original of the appointment within the specified time, copy of the original in electronic form may be produced in court subject to production of the original of such appointment within a reasonable time as the court may direct.”.

15 **5.** Section 55 of the principal enactment is hereby amended by the repeal of subsection (2) of that section, and the substitution therefor of the following subsections: -

Amendment of section 55 of the principal enactment

20 “(2)(a) Every party to an action, not appearing by a registered attorney, shall on or before the date specified in the summons deliver to the Registrar a memorandum substantially in the Form No. 16A in the First Schedule in duplicate setting out the address, mobile phone number and the electronic mail address if any which shall be considered as the registered address, the registered mobile phone number and the registered electronic mail address respectively of such party for the service of the notices or any other legal document required to be served on such party under the provisions of this Code unless otherwise provided. Every party shall inform the Registrar forthwith of any change in the address, the mobile phone number or the electronic mail address.

35 (b) Every party shall with such memorandum tender to the Registrar stamps to the value required to cover cost of service of such notices or other legal document by registered post.

5 (3) Where a party appears by a registered attorney, the address, the mobile phone number and the electronic mail address of the registered attorney contained in his appointment under section 27 shall be deemed to be the registered address, the registered mobile phone number and the registered electronic mail address of such Attorney-at-Law so long as the appointment is in force.

10 (4) Any notice or other legal document required to be served on any party shall be deemed sufficient service if served by registered post or courier service or through electronic means-

15 (i) on such party on the registered address, the registered mobile phone number or the registered electronic mail address of such party; or

20 (ii) on such registered attorney, where a party appears by a registered attorney and such appointment is in force, on the registered address, the registered mobile phone number and the registered electronic mail address of registered attorney.

25 (5) The Registrar shall file one copy of the memorandum substantially in the Form No. 16A furnished to him as part of the record of the case and keep and maintain the other copy by way of a separate ledger.”.

6. Section 59 of the principal enactment is hereby repealed and the following section is substituted therefor: -

Replacement of section 59 of the principal enactment

30 “Service of summons **59.** (1) (a) Summons shall ordinarily be served by registered post or courier service.

(b) Where the plaintiff wishes summons may also be served through electronic mail, all necessary documents shall be submitted by the plaintiff to the relevant court in electronic form.

5 (2) In the case of a company or a body corporate summons may be delivered by registered post, courier service or electronic mail if any to the registered office or to the principal place of business of such company
10 or body corporate.

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

(4) Where the court is *prima facie* satisfied that the defendant is in the employment of another person, the court may send the
20 summons by registered post or courier service to the employer at his place of business or, where the employer is a company or a body corporate, to any secretary, manager or other
25 like officer of the company or the body corporate, 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.

5 (5) Where a defendant appears in court in person on summons being served on him in the manner referred to above, he shall produce the national identity card or passport or any other mode of identification as the court may deem fit.

(6) In this section-

“ head of department ”-

- 10 (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;
- 15 (b) when used with reference to a person employed in a local authority, where the local authority is a Municipal Council, means the Municipal Commissioner of that Council and where the local authority is an Urban Council or a Pradeshiya Sabha, means the Chairman or the Secretary of that Council or Sabha;
- 20
- 25 (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” means the identity card issued to such person under the Registration of Persons Act, No. 32 of 1968.”.

5 7. Section 60 of the principal enactment is hereby repealed and the following section is substituted therefor: - Replacement of section 60 of the principal enactment

“Personal service” **60.** (1)(a) The Court shall, where it is reported that summons could not be effected by any means specified under paragraph (a) of subsection (1) of section 59 or where the summons having been served and the defendant fails to appear, direct to serve summons personally on the defendant by delivering or tendering to him the said summons through the process server accompanied by a precept in Form No. 17 of the First Schedule. In the case of a company or body corporate summons may be served 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 company or body corporate.

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(b) (i) The process server may, upon the summons being served on the defendant, obtain the signature or the thumb impression of such defendant on the precept as acknowledgment of the service of summons.

25

(ii) The process server shall return the precept to the court, together with a report setting out the manner in which the summons

5 was served on the defendant containing particulars relating to the identity of the person, date, time and place the summons were served. The report shall also state whether defendant, placed or refused to place his signature or thumb impression, on the precept as acknowledgment of the service of summons.

10 (iii) The refusal by any defendant to place the signature or thumb impression, as the case may be, on the precept shall not be considered as an invalidation of the service of summons.

15 (2) If the service referred to in the preceding provisions of this section cannot by the exercise of due diligence be effected, the court may having obtained an affidavit from the plaintiff stating that to the best of his knowledge the defendant resides in the captioned address and not living outside Sri Lanka, order the process server to affix the
20 summons at some conspicuous part of the house in which the defendant ordinarily resides or in the case of a company or a body corporate, at the registered office or at the usual place of business or office of such company or a body
25 corporate and in every such case the summons shall be deemed to have been duly served on the defendant.

30 (3) The Court may authorise the process server to serve the summons outside the local limits of the court as directed by the court.

(4) Where it is reported by the process server that the summons could not be affected personally on the defendant on the last known address given by the plaintiff and the plaintiff

5 informs Court by filling affidavit that the plaintiff is unaware of the place where the defendant resides, the court upon being satisfied on the contents of such affidavit, order that the summons be served by way of publication in newspapers in all three languages as the court may in each case direct.

(5) For the purpose of this chapter-

10 "process server" means a fiscal, a deputy fiscal, an officer authorized by the Judge or Registrar of the court to serve documents of the court within the local limits or outside the local limits of the court as directed by the court, or the Grama Niladhari within whose division the defendant resides.".

20 **8.** Section 61 of the principal enactment is hereby repealed and the following section is substituted therefor: - Replacement of section 61 of the principal enactment

"Proof of service

61. When summons are served by-

- (a) registered post or courier service, the registered post article receipt or proof of delivery of courier service;
- 25 (b) electronic mail, the proof of sending of the electronic mail by the Registrar and filed as part of the case record;
- (c) publication in newspapers, copies of such publications; or

(d) in any other manner, an affidavit of such service,

5 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.”.

10 **9.** Section 66 of the principal enactment is hereby repealed and the following section is substituted therefor: - Replacement of section 66 of the principal enactment

15 “Service on agent or affixing on immovable property **66.** In an action to obtain relief or compensation for wrong in respect of an immovable property or connected thereto, if the service cannot be made on the defendant in person, it may be made on any agent of the defendant in charge of the property and in cases where such agent cannot be found the court may direct that the summons shall be affixed at some conspicuous part of such property.”.

20 **10.** Section 68 of the principal enactment is hereby repealed and the following section is substituted therefor: - Replacement of section 68 of the principal enactment

25 “Service on defendant in jail **68.** (1) If the defendant be in jail, the summons shall be delivered by the process server to the officer in charge of the jail in which the defendant is confined, and such officer shall cause the summons to be served personally on the defendant and obtain an acknowledgement of receipt of the summons by the defendant.

5 (2) The precept shall be returned through the process server to the court from which it is issued, with a statement of the service endorsed thereon, and signed by the officer in charge of the jail.

(3) Where any defendant is in prison on the summons returnable date the officer in charge of the prison shall produce the defendant to the Court .”.

10 11. Section 70 of the principal enactment is hereby amended by the substitution for the words and figures “other requirements of section 55.”, of the words and figures “other requirements of section 55. Such service can be effected by courier service or by any legal firm authorised by the laws of
15 such country where the defendant resides and the proof of personal service of summons shall be submitted to the court.”.

Amendment of section 70 of the principal enactment

20 12. The following new chapter is hereby inserted immediately after Chapter VIII of the principal enactment and shall have effect as Chapter VIII^A of that enactment:-

Insertion of new Chapter VIII^A in the principal enactment

“CHAPTER VIII^A
SERVICE OF ORDERS

25 Communication of Orders 71A. The Court may, in addition to the service of documents, direct the Registrar to communicate any order of court including an enjoining order, an injunction, an interim injunction, a sequestration order and an interim order to the parties concerned by way of electronic or telephone devices.”.

13. Section 86 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor of the following: -

Amendment
of section 86
of the
principal
enactment

“(2) Where,

5 (a) at anytime after the case is fixed for *ex-parte* trial against the defendant for default; or

(b) any time after the decree is entered against him for default but without the service of the decree on him; or

10 (c) within fourteen days of the service of the decree entered against him for default,

the defendant, with notice to the plaintiff makes application to and thereafter satisfies court, that he did not receive the summons or that he had reasonable grounds for such default, the court shall set aside the order fixing the case for *ex-parte* trial, the judgement and decree as the case may be and permit the defendant to proceed with his defence as from the stage of default upon such terms as to costs or otherwise as to the court shall deem fit.”.

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20

14. Section 653 of the principal enactment is hereby amended by the substitution, for the words “one thousand five hundred rupees”, of the words “two million rupees.”.

Amendment
of section
653 of the
principal
enactment

15. The First Schedule to the principal enactment is hereby amended as follows: -

Amendment
to First
Schedule to
the principal
enactment

(1) by the repeal of form No. 7 thereof, and the substitution therefor of the following form:-

“No. 7 [Section 27]

FORM OF APPOINTMENT OF A REGISTERED ATTORNEY

5 Know all men by these presents that I/ we....., holder of National Identity card bearing no..... have nominated, constituted and appointed, and do hereby nominate constitute and appoint 10Attorney-at-Law to be my/our registered Attorney and for and in name and behalf before the 15 to appear and therein to (sue or defend, as the case may be, showing what the action is)

20 And to receive and to take all moneys that may be paid to him by the said in the said action, and to move for and obtain in his name any order or orders from the said Court for any payments of any sum or sums of money that may be deposited therein in respect of and to give all necessary receipts, releases and discharges therefor. And if need be, 25 to refer the case to the award and decision of arbitrators and to name an arbitrator for, and for that purpose to sign any motion, submission, or bond; or, if necessary to allow and consent to a judgement being entered against as to 30 said Attorney-at-Law shall appear fit and proper; and against any judgment, order, sentence, or decree interlocutory or final of the said Court to appeal; and every bond or recognizance whatsoever necessary in the course of

proceedings for the prosecution of such appeal for and in
..... name and as
..... act to sign, and upon
any judgement or order of the said
5 Court to proceed to execution
against the person and property of the said
.....

And do further authorize and
empower said Attorney-at-Law, to
10 take and use all lawful ways and means, and to do and
perform all such acts, matters and things as may be necessary
in and about the premises which being
personally present might or could lawfully do, and, if
necessary, one or more Attorney or Attorneys-at-Law or
15 counsel, to appoint, and again at pleasure such appointment
to revoke, and further promise and agree
to release all kinds of irregularities, and to ratify, confirm,
and allow all and whatsoever the said Attorney-at-Law or
his substitute or substitutes, or the said counsel, shall do
20 herein.

.....
Signature/s

Witness hand at
.....on thisday of
2520...

I certify that I am satisfied with the identity of the said
.....(name/s) according to the
National Identity Card/Passport/ Senior Citizen Identity
Card/Driving Licence bearing number
30 and he/she/they signed before
me on

.....
Signature of the registered Attorney/
Attorney-at-Law/Solicitor/Notary/
Ambassador/High Commissioner/
5 Diplomatic Officer/Consular Officer.
(Seal)

Address:
Phone numbers: Office :
Mobile Number :
10 Electronic mail Address:
Fax Number:

.....
Signature of the registered
Attorney (Seal).”;

15 (2) by the repeal of form No. 16A thereof, and the
substitution therefor of the following form :-

“No. 16A [Sections 27 and 55]

MEMORANDUM OF REGISTERED ADDRESS /
REGISTERED MOBILE PHONE NUMBER /
20 REGISTERED ELECTRONIC MAIL ADDRESS

In the Commercial High Court /
District Court /
Primary Court of
Case No.

25 I,.....(the Plaintiff/
Defendant/Petitioner/Respondent/Party seeking to be added/
substituted) hereby furnish my address/ mobile phone
number/ electronic mail address for the service of the notices
and all other legal documents required to be served on me
30 under this Code.

I undertake to inform the Registrar of any change of the registered address/registered mobile phone number/registered electronic mail address forthwith by submitting another memorandum in the same form.

- 5 Address:
- Mobile Phone Number:
- Electronic mail Address:
- Fax Number:

10
Signature
Plaintiff/Defendant/Petitioner/ Respondent/
Party Seeking to be added/ substituted.”;

(3) by the repeal of form No. 17 thereof, and the substitution therefor of the following form:-

15 “No. 17 [Sections 60, 71A]

FORM OF PRECEPT TO PROCESS SERVER TO SERVE
SUMMONS OR ORDERS

To the Fiscal / Authorized Officer / Grama Niladhari of the
20
Court/Division of
Serve forthwith the summons 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 summons and one
25 of the copies of (or concise statements presented with) the
plaint, which accompany the summons. And certify to this
Court on or before the day of20.....,
in what manner you have executed this precept, returning
the summons attached to your certificate as an exhibit.

By order of Court,
(Signed),
Registrar.

The.....day of20..”.

- 5 **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

