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SUPPLEMENT

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CIVIL PROCEDURE CODE (AMENDMENT)

A

BILL

to amend the Civil Procedure Code (Chapter 101)

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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 this section as amended is to insert new definitions for the expressions “document” and “document in electronic form”.

Clause 3 : This clause amends section 18 of the principal enactment and the legal effect of this section as amended is to provide for the striking out of the names of improperly joined parties before the day first fixed for pre-trial conference.

Clause 4 : This clause amends section 22 of the principal enactment and the legal effect of the section as amended is to provide for the objections for non- joinder or misjoinder of parties to be taken before the day first fixed for pre-trial conference.

Clause 5 : This clause repeals Chapter XA of the principal enactment and replaces with the new Chapter XA titled “FIXING DAY OF PRE-TRIAL CONFERENCE”.

Clause 6 : This clause inserts new Chapter XB titled “PRE- TRIAL STEPS TO BE TAKEN BEFORE THE PRE-TRIAL CONFERENCE”, immediately after Chapter XA of the principal enactment.

Clause 7 : This clause replaces section 80 of the principal enactment and replaces with the new section on “Fixing the case for trial”.

Clause 8 : This clause repeals section 80A of the principal enactment.

Clause 9 : This clause amends section 93 of the principal enactment and is consequential to the amendment made by clauses 5 and 19.

Clause 10 : This clause amends section 94 of the principal enactment and the legal effect of this section as amended is to provide for any party to deliver interrogatories fifteen days before the date first fixed for the pre-trial conference.

Clause 11 : This clause amends section 101 of the principal enactment and the legal effect of the section as amended is to provide for a party to require the other party to admit the genuineness of any document not less than fifteen days before the date first fixed for the pre-trial conference.

Clause 12 : This clause amends section 102 of the principal enactment and the legal effect of the section as amended is to provide for a specific time period for a party to apply for an order for the discovery of documents.

Clause 13 : This clause amends section 103 of the principal enactment and the legal effect of the section as amended is to provide for the procedure in relation to the orders for preservation, disclosure or production of documents in electronic form.

Clause 14 : This clause amends section 104 of the principal enactment and the legal effect of the section as amended is to provide for giving a specific time period for any party to obtain an order by court to produce documents for inspection.

Clause 15 : This clause inserts a new section 104A in the principal enactment and the legal effect of the new section is to make provisions in relation to protective orders.

Clause 16 : This clause amends section 109 of the principal enactment and is consequential to the amendment made by clause 13.

Clause 17 : This clause repeals section 117 of the principal enactment and replaces with the new section 117 on provisions as to documents apply to other material objects and documents in electronic form.

Clause 18 : This clause repeals subsection (2) of section 121 of the principal enactment and is consequential to the amendment made by clause 6.

Clause 19 : This clause repeals Chapter XVIII of the principal enactment and replaces with the new Chapter XVIII titled "PRE - TRIAL CONFERENCE AND PRE-TRIAL ORDERS".

Clause 20 : This clause amends section 175 of the principal enactment and is consequential to the amendment made by clause 19.

Clause 21 : This clause provides transitional provisions and the legal effect of this section is to provide for all pending actions and matters filed in the District Court in respect of which the date for pre-trial hearing has already been fixed or any pre-trial step has already been taken, to be dealt under the repealed provisions.

Civil Procedure Code (Amendment)

L.D.-O 63/2021

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 2023. 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 definitions:- Amendment
of section 5
of Chapter
101

“document” includes a document in electronic form;

10 “document in electronic form” includes -

(a) any information consisting of any contemporaneous recording or reproduction thereof or any information contained in a statement produced by a computer within the meaning of the Evidence (Special Provisions) Act, No. 14 of 1995;

15 (b) any information contained in a data message, electronic document, electronic record, electronic communication or other information or transaction in electronic form within the meaning of the Electronic Transactions Act, No.19 of 2006;

20 (c) such other document or information or record or communication or transaction in electronic form that may be specified by any other written law;

25

5 (d) such other document or information or record or communication that is stored on devices, servers and back-up systems in any medium that encompasses computer technology or any such document or information or record or communication that has been deleted; or

10 (e) any metadata and other embedded data which is not typically visible on a computer screen or print out;”.

3. Section 18 of the principal enactment is hereby amended in subsection (1) thereof, by the substitution for the words “before the hearing,” of the words “before the day first fixed for the pre-trial conference,”. Amendment of section 18 of the principal enactment

15 4. Section 22 of the principal enactment is hereby amended as follows:- Amendment of section 22 of the principal enactment

(1) by the substitution for the words “before the hearing.” of the words “before the day first fixed for pre-trial conference.”; and

20 (2) by the repeal of the marginal note thereof and substitution therefor of the following marginal note:-

25 “Objections for non-joinder or mis joinder to be taken before the day first fixed for pre-trial conference.”.

5. Chapter XA (section 79A) of the principal enactment is hereby repealed and the following Chapter is substituted therefor: -

Replacement of Chapter XA in the principal enactment

“CHAPTER XA

5 **FIXING DAY OF PRE-TRIAL CONFERENCE**

Date for pre-trial conference order

79A. The court shall-

(a) upon the filing of the answer; or

(b) where a replication is permitted, on the last day of the period of time allowed for the filing of the replication, whether such replication is filed or not,

10

appoint a date not exceeding five months and not less than three months from such date, for pre-trial conference to be commenced, either in the presence of all parties to the action or such parties as are present.”.

15

6. The following new Chapter is hereby inserted immediately after Chapter XA of the principal enactment and shall have effect as Chapter XB of that enactment: -

Insertion of new Chapter XB in the principal enactment

20

“CHAPTER XB

PRE-TRIAL STEPS TO BE TAKEN BEFORE THE PRE-TRIAL CONFERENCE

25 Pre-trial steps to be taken before the date fixed for the pre-trial conference

79B. The parties shall, in addition to any other pre-trial step that may be taken by such parties before the case is fixed for pre-trial conference, tender -

(a) their proposed admissions and issues of fact and law in writing;

(b) (i) lists of witnesses to be called by such parties at the trial; and

5 (ii) lists of documents relied upon by such parties and to be produced at the trial;

(c) copies of documents listed in the lists of documents which are in the possession of or under the control of such parties,

10 to the registry of the court, not less than thirty days before the date first fixed for the pre-trial conference and after giving notice to all other parties with proof of service thereof.

15 Tendering of documents in electronic form
20 **79c.** (1) Notwithstanding anything to the contrary contained in the Evidence (Special Provisions) Act, No. 14 of 1995, Electronic Transactions Act, No. 19 of 2006 or any other written law, where any party proposes to tender any document in electronic form, the provisions of this section shall apply in relation to the tendering of such documents.

25 (2) Any party proposing to tender documents in electronic form shall, not less than thirty days before the date first fixed for pre-trial conference, file in court, after giving notice to the opposing party or parties –

(a) the list of such documents in electronic form together with an index thereof; and

(b) a copy or copies of such documents as is sufficient to enable the party to understand the nature of such evidence.

5 (3) Any party to whom a notice has been given under subsection (2) may, within fifteen days of the receipt of such notice apply for permission from the party giving such notice, to access and inspect -

10 (a) the documents in electronic form, sought to be tendered in court under subsection (2);

15 (b) the machine, device, computer or information system, as the case may be, used to produce, reproduce, generate, create, send, receive, store, display, communicate or process the documents in electronic form referred to in paragraph (a); and

20 (c) any records relating to the production, reproduction, generation, creation, sending, receipt, storage, display, communication or processing of the documents referred to in
25 paragraph (a).

(4) Upon receipt of an application for permission to access and inspection under subsection (3), the party proposing to tender such documents in electronic form shall, within
30 reasonable time, but not later than fifteen days after the receipt of such application, provide a

5 reasonable opportunity to the party applying
or his agents or nominees, to have access to,
and inspect such documents in electronic form,
machine, device, computer, information system
or records referred to in the application.

(5) Where –

10 (a) the party proposing to tender
documents in electronic form is
unable to give permission or does not
give permission for access and
inspection as applied for under
subsection (3); or

(b) the parties are unable to agree on any
matter relating to -

15 (i) the notice given under
subsection (2); or

20 (ii) an application for access and
inspection made under
subsection (3) or the manner and
extent of such access and
inspection,

25 the court may on application made by either
party, make such order or give such
direction, as the interest of the justice may
require.

(6) The time period referred to in subsection
(3) or (4) may be extended at the discretion of
the court, based on the special circumstances
of each case.

(7) Where any party proposing to tender any document in electronic form under this section –

- 5 (a) fails to give notice under subsection (3);
- (b) upon application being made for access and inspection under subsection (3), fails to provide a reasonable opportunity therefor; or
- 10 (c) fails to comply with any order or direction given by court under subsection (5),

15 such party shall not be permitted to tender such documents in electronic form, in respect of which the failure was occasioned:

 Provided however, the steps or applications referred to in this Chapter shall be followed prior to the conclusion of the pre- trial conference.

20 (8) Where any party objects to the admissibility of any document in electronic form tendered under this section, such party shall file in court, objections with reasons therefor in writing with copies to all other

25 parties, either before the pre trial conference or at the pre trial conference, as the case may be.

 (9) Where any party files objections under subsection (8), the court shall hear the parties to ascertain whether the parties can admit such

5 documents in electronic form, and where no such admission is recorded, the court shall make an appropriate pre-trial order under section 142B with regard to the admissibility of such documents at the pre-trial conference.”.

7. Section 80 of the principal enactment is hereby repealed and the following section is substituted therefor: -

Replacement of section 80 of the principal enactment

10 ^{”Fixing the case for trial} **80.** (1) After the issues are settled and the Judge conducting the pre-trial conference is satisfied that the case is ready for trial, the Judge shall forthwith appoint a date not later than fourteen days from the date of the conclusion of the pre-trial conference for the case to be called in order to fix a date for the trial, in the trial court.

20 (2) The trial shall be conducted by a Judge appointed for such purpose, other than the Judge who conducted the pre-trial conference:

25 Provided that, where a Judge has not been separately appointed to conduct the pre-trial conference, the Judge who has been appointed for such court shall conduct both pre-trial conference and the trial of such action.

(3) The Judge who is fixing the case for trial may, in any appropriate case, fix several dates for trial.”.

8. Section 80A of the principal enactment is hereby repealed.

Repeal of section 80A of the principal enactment

9. Section 93 of the principal enactment is hereby amended, as follows:-

Amendment of section 93 of the principal enactment

5 (1) by the substitution, in subsection (1) thereof, for the words “first fixed for Pre-Trial of the action” of the words “first fixed for pre-trial conference of the action”; and

10 (2) by the substitution, in subsection (2) thereof, for the words “first fixed for Pre-Trial of the action” of the words “first fixed for pre-trial conference of the action”.

15 10. Section 94 of the principal enactment is hereby amended, by the substitution, in subsection (1) thereof, for the words “Any party may at any time before hearing,” of the words “Any party may, fifteen days before the date first fixed for the pre-trial conference,”.

Amendment of section 94 of the principal enactment

20 11. Section 101 of the principal enactment is hereby amended, by the substitution, in subsection (1) thereof, for the words “on motion *ex-parte* within a reasonable time not less than ten days before the hearing,” of the words “on motion *ex-parte* not less than fifteen days before the date first fixed for the pre-trial conference,”.

Amendment of section 101 of the principal enactment

25 12. Section 102 of the principal enactment is hereby amended, by the substitution, in subsection (1) thereof, for the words “party to the action may, at any time before the hearing,” of the words “parties to the action may, fifteen days before the date first fixed for the pre-trial conference”.

Amendment of section 102 of the principal enactment

13. Section 103 of the principal enactment is hereby amended as follows:-

Amendment
of section
103 of the
principal
enactment

(1) by the re-numbering of that section as subsection (1) thereof;

5 (2) by the substitution, in the re-numbered subsection (1) thereof, for the words “order the production by any party” and “when produced in such manner”, of the words “order the production or preservation by any party” and “when produced or preserved in
10 such manner”, respectively;

(3) by the insertion, immediately after the re-numbered subsection (1) thereof, of the following new subsections:-

15 “(2) A party intending to institute any proceeding before court may, prior to the institution of such proceedings, make an application *ex parte*, by way of petition supported by an affidavit, for an order to be made requiring a person or entity having
20 possession of any document in electronic form, who shall be made the respondent in such application, to preserve, disclose or produce such document, as may be specified in such order.

(3) The court may, upon the receipt of an application under subsection (2), make an order as
25 prayed for in such application, if –

(a) the person or entity against whom an order is sought is likely to be a party to the proceeding to be instituted subsequently;

30 (b) the applicant is also likely to be a party to such proceeding to be instituted subsequently;

5 (c) the document in electronic form sought to be preserved, disclosed or produced is relevant to the matter in dispute in respect of which the proceedings are intended to be instituted and is in the possession or control of such respondent;

10 (d) the duty to preserve, disclose or produce any electronic document upon the receipt of such order extends to the document in electronic form of which the applicant seeks preservation, disclosure or production, if proceedings had commenced against such person or entity;

15 (e) preservation, disclosure or production of such document in electronic form is desirable in order to –

(i) dispose the intended proceedings in a fair manner;

20 (ii) assist the dispute to be resolved without proceedings; or

(iii) save costs.

25 (4) Any person who or entity which receives an order made under subsection (3) shall have a duty to comply therewith and in the event of non-compliance, such person or entity shall be guilty of the offence of contempt of court.

(5) Any party to any proceeding pending before a court may, not less than forty-five days before the date first fixed for the pre-trial conference, make an

application for an order to be made requiring any other party to such action to preserve, disclose or produce any relevant document in electronic form, as may be specified in such order.

5 (6) Any party making an application under subsection (5) of this section shall –

(a) describe with reasonable particularity each item or category of items to be preserved or disclosed or produced; and

10 (b) specify the manner of preservation, disclosure or production and by whom such preservation, disclosure or production is to be performed.

15 (7) A party who receives an order made under subsection (5) shall have a duty to comply therewith and in the event of non-compliance, the court may–

(a) where the restoration of such document in electronic form is possible, order for the restoration of the same and award costs;

20 (b) where the restoration of the document in electronic form is not possible and where the court is of the opinion that prejudice has been caused to the party making the application, due to the loss of such document and that non-complying party has acted with the intention of depriving the use of such document by the other party-

25 (i) impose costs in a sum as may be deemed reasonable by the court; or

30

5 (ii) where the prejudice cause cannot be cured by way of costs, in case of a plaintiff, order to have his action dismissed for want of prosecution, and in case of a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered.

10 (8) A party or person failing to comply with an order made under subsection (5) of this section shall not be entitled to produce any such document in electronic form in evidence on his behalf in such action, unless he satisfies the court that such
15 electronic document relates only to his own title, or that he had some other sufficient cause for not complying with such order.

20 (9) A party to any proceeding may make an application *ex-parte* by way of a petition supported by an affidavit, not less than forty-five days before the date fixed for pre-trial conference, for an order to be made requiring any person or entity who is not a party to such proceeding, to preserve, disclose, or produce any document in electronic form in the
25 possession or control of such person or entity. The person or entity against whom such order is sought shall only be made the respondent in such application.

30 (10) Upon receipt of an application under subsection (9), the court may make an order as prayed for in such application, if –

5 (a) the document in electronic form of which the preservation, disclosure or production is sought is likely to support the case of the applicant or adversely affect the case of any party to such proceeding;

(b) preservation, disclosure or production is necessary in order to disprove the claim in a fair manner or to save costs.

(11) An order made under subsection (10) may-

10 (a) specify the documents in electronic form which the respondent is required to preserve, disclose or produce;

15 (b) if relevant, specify the time and place of preservation, disclosure or production to take place;

(c) specify the format or formats in which document in electronic form is to be produced; and

20 (d) require the respondent, when making preservation or disclosure, to specify the documents, if any, which are or not in his control or possession with reasons therefor.

25 (12) Any person or entity who fails to comply with an order made under subsection (10), shall be guilty of the offence of contempt of court.

(13) Where a person, entity or party from whom preservation, disclosure or production of a document is sought under subsection (2), (5) or (9)

5 objects to such preservation, disclosure or production from the source of such document for not being reasonably accessible due to the burden of cost, the court may limit the extent of such preservation, disclosure or production otherwise allowed under the said subsections where –

10 (a) the preservation, discovery or production sought is unreasonably cumulative, duplicative, disproportionate or excessive to the material facts of the case;

(b) the requested document in electronic form can be obtained from any other source which is more convenient, less burdensome or less expensive;

15 (c) the party seeking preservation, disclosure or production has had ample opportunity to obtain such document by discovery in the action; or

20 (d) the requested document in electronic form is irrelevant or not proportionate to the issues in dispute or the party's resources or the burden of expense of the proposed discovery outweighs the possible benefits and importance in resolving the issues:

25 Provided however, the court may order preservation, disclosure or production from the sources of such document in electronic form, if the party making the application for preservation, disclosure or production is able to show good cause, subject to such limitations as may be imposed by
30 the court.

(14) Unless otherwise agreed or ordered, electronic copies of the disclosed documents in electronic form shall be produced –

(a) in their native format;

5 (b) in a manner which preserves metadata relating to the date of creation of each such document; and

10 (c) organised and labeled in a manner that corresponds with the categories of such documents as requested.”; and

(4) by the repeal of the marginal note thereof and the substitution therefor of the following marginal note:-

15 “Orders for preservation, disclosure or production of documents or documents in
20 electronic form.”.

25 **14.** Section 104 of the principal enactment is hereby amended, by the substitution in subsection (1) thereof, for the words “party to an action may, at any time before or at the hearing thereof,” of the words “party to an action may, fifteen days before the date first fixed for the pre-trial conference thereof,”. Amendment of section 104 of the principal enactment

30 **15.** The following new section is hereby inserted immediately after section 104 of the principal enactment and shall have effect as section 104A of that enactment: - Insertion of new section 104A in the principal enactment

”Protective orders

- 5 **104A.** A party, person or an entity against whom the discovery, production or preservation of a document or document in electronic form is sought, may apply for a protective order to the court within which such action is pending. The court may, for good cause, make one or more of the following orders to protect any such document or the interests of a person, entity or party: -
- 10 (a) prohibiting the disclosure or discovery;
- (b) specifying terms, including the time, place, forms and manner of the disclosure or discovery;
- 15 (c) prescribing a discovery method other than the one selected by the party seeking discovery;
- (d) prohibiting inquiry into certain matters or limiting the scope of disclosures or discovery to other matters;
- 20 (e) designating persons or experts who may be present while the discovery is conducted;
- 25 (f) appointing persons or experts who shall conduct the disclosure, discovery, preservation, inspections, keep custody, examination, analysis, reporting and presenting them in court;
- 30

5 (g) directing that a confidential research, development or trade secret or undisclosed or confidential information of commercial nature not to be disclosed or disclosed only in a specified manner; or

10 (h) directing that a document in relation to undisclosed confidential research, development or trade secret or undisclosed or confidential information of commercial nature not to be disclosed or disclosed only in a specified manner.”.

15 **16.** Section 109 of the principal enactment is hereby amended, by the substitution, in subsection (1) thereof, for the words “interrogatories, or for discovery, production, or inspection, which” of the words “interrogatories, or for discovery, production, inspection, preservation or protection, which”.

Amendment of section 109 of the principal enactment

20 **17.** Section 117 of the principal enactment is hereby repealed and the following section is substituted therefor:-

Replacement of section 117 of the principal enactment

25 “Provisions as to documents apply to other material objects and document in electronic form **117.** The provisions of this Chapter as to documents shall, *mutatis mutandis*, apply to all other material objects producible as evidence and to all documents in electronic form, to the extent not inconsistent with the provisions of this Chapter.”.

18. Section 121 of the principal enactment is hereby amended, by the repeal of subsection (2) thereof.

Amendment of section 121 of the principal enactment

(f) to identify the witnesses and documents and avoid unnecessary production of evidence at the trial; and

5 (g) to fix strict time limits for pre-trial orders and enforcement thereof.

10 (2) (a) The Judge shall, at the pre-trial conference, make every effort to persuade the parties to arrive at a settlement of the dispute and where the parties agree for a settlement, such settlement shall be recorded and signed by the parties and an order shall be made in accordance with the terms of such settlement.

15 (b) The Judge in an appropriate case, may direct the parties to appear either in person or in the case of a party being a legal person, an authorized representative thereof to be present at the pre-trial conference in order to facilitate a settlement, adjustment, compromise or other agreements.

20 (3) The judge at the pre-trial conference may determine unresolved jurisdictional and legal issues.

25 Pre-trial orders **142B.** Subject to the provisions of section 104A, the Judge shall, at the pre-trial conference, discuss with the parties, and make appropriate pre-trial orders on the following matters: -

30 (a) identifying and obtaining admissions of facts or documents;

- 5 (b) identifying the number of witnesses to be called at the trial based on the relevancy and admissibility to the case and dispensing with calling of unnecessary witnesses;
- 10 (c) identifying the documents to be produced at the trial based on the relevancy, admissibility, to the case and authenticity of documents and in appropriate instances dispense with proof of such documents;
- 15 (d) with regard to the discovery, inspection, protection, preservation and production of documents and tangible things including specification of terms, time, place, manner and form in which such documents and tangible things to be discovered, protected, preserved and produced in court and authentication of documents and signatures;
- 20 (e) the protection of trade secrets, other confidential research information and undisclosed commercial information subject to privileges and limitations;
- 25 (f) issuing of certified copies of documents in the custody of any public office, public corporation, provincial council, local authority, bank, body incorporate or
- 30

unincorporate, partnership, hospital, medical institute, court, tribunal or any such similar institution:

5

Provided that, the provisions of this paragraph shall not prejudice the right of the State to withhold any document on the ground that in the opinion of the Minister assigned in terms of Article 44 or 45 of the Constitution the subject to which the document relates, the public interest would suffer by such disclosure;

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- (g) upon the agreement of the parties, issuing of commissions to a single, joint or court appointed independent experts to inquire and report on any question of fact and express an opinion thereof:

20

25

Provided that, any application for the issue of a commission for local investigation as referred to in Chapter XXIX shall be made prior to the day first fixed for the pre-trial conference:

30

Provided further, that the court may, in its discretion, issue a commission for such local investigation after the day first fixed for pre-trial conference if it is satisfied, for reasons to be recorded and subject to terms as to costs or otherwise, that a commission is

necessary for the determination of the matters in dispute or settlement of the dispute between the parties;

- 5 (h) recording of any agreement of parties with regard to any matter, including any issues of facts or law, mode of proof of any fact or document or the number of witnesses to be called or number of documents to be produced at the trial, and entering of orders or judgment in accordance with such agreement of parties:

15 Provided that, the court shall read out and explain the effect of such agreement to the parties concerned and record the fact that the parties understand the contents of such agreement and the effect thereof and the parties shall sign the agreement or the case record where such agreement is recorded orally in open court;

- 25 (i) consolidating two or more actions, subject to the provisions of section 149A;

(j) withdrawal of actions;

- 30 (k) the use of technology or employing a special interpreter at the trial;

5 (l) identifying the number of trial dates or period within which a trial may be concluded and how the time available for the trial will be used; or

(m) any other step as may be necessary or desirable for the just and expeditious disposal of the action.

10 Parties to be ready with original documents
15 **142c.** The parties or their registered attorneys shall, at the pre-trial conference, bring with them and have in readiness at the pre-trial conference, original or certified copies of all documents specified in the list of documents and tendered to the registry of the court under section 79B.

20 Permission of court to call additional witnesses and additional documents identified or discovered at pre-trial conference
25 **142d.** (1) The court shall, at the pre-trial conference, on application of any party, grant permission to such party, to call any witness or produce any document at the trial, if such witness or document is identified at such conference to be relevant to the matters in dispute, notwithstanding such witness or document not being included in the list of witnesses or documents filed under paragraph (b) of section 79B:

30 Provided that, the pre-trial Judge may award costs against the party seeking to tender documents or summon witnesses which had not been included in the list filed under paragraph (b) of section 79B unless such party can adduce sufficient reasons for the failure to include such documents or witnesses in the said list.

5 (2) The court may, at its discretion, grant permission at the pre-trial conference, to any party to produce any document at the trial and call any witness in proof thereof, if such document is discovered under Chapter XVI of the principal enactment and relevant to the matters in dispute.

10 (3) Where the court grants permission to call any additional witness or document under subsection (1) or (2), the court shall, at the pre-trial conference, record the fact that such party is entitled to call such witness or produce such document at the trial and no further list of witnesses or documents is required to be filed thereafter.
15

20 Pre-trial steps not to be allowed after fixing the date of trial **142E.** Subject to the provisions of this Act, any application for pre-trial steps shall not be allowed after the conclusion of the pre-trial conference of an action unless the court is satisfied for reasons to be recorded and subject to costs that a grave and irremediable injustice would be caused if such steps are not permitted and the party applying for such steps is not guilty of laches.

25 Determination of issues **142F.** (1) Where the judge is satisfied that all the pre-trial steps have been taken, the Judge shall determine the issues, taking into consideration the pleadings, proposed admissions and issues of the parties, interrogatories, documents, agreement of the parties and reports if any, submitted to court during the pre-trial conference.
30

5 (2) Where issues both of law and facts arise in the same action, and the court is of the opinion that the case may be disposed of on the issues of law only, the court shall try such issues first and for that purpose the court may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

10 Advancement or postponement of pre-trial **142G.** The Judge conducting the pre-trial conference may, either on his own motion or on the application of any party and for sufficient cause shown, advance or postpone the date fixed for the pre-trial conference:

15 Provided that, the Judge conducting the pre-trial conference shall conclude the hearing within four months from the commencement of such conference, unless the Judge is prevented from acting accordingly for reasons which shall be recorded, including delays in adducing evidence or discoveries.

20

Default of parties **142H.** Where any party-

25 (a) fails to diligently take steps according to the provisions of Chapters XB and this Chapter or diligently prosecute or defend the case during the pre-trial conference or fails to comply with any pre-trial order without any reasonable ground; or

30 (b) fails to appear without sufficient cause on the day fixed for the pre-trial conference or on any other day to which it is adjourned,

the Judge conducting the pre-trial conference may, taking into consideration all appropriate circumstances -

- 5 (i) subject to the payment of costs or pre-payment of costs, make such appropriate order as he may think fit, including, directing such party to comply with the requirement which was not complied with, unless
10 such non-compliance was substantially justified;
- 15 (ii) continue further proceedings notwithstanding such default was made by any party who has obtained any pre-trial order, disregarding any such pre-trial order and upon such terms as to costs being awarded against such defaulting party; or
- 20 (iii) proceed to dispose of the action in one of the methods specified in Chapter XII:

25 Provided that, the Judge shall make every endeavor to make orders in terms of paragraph (i) or (ii), prior to an order being made under paragraph (iii), unless a party is absent and unrepresented at the pre-trial conference.”.

20. Section 175 of the principal enactment is hereby amended as follows :-
Amendment of section 175 of the principal enactment

- 5 (1) by the substitution in subsection (1) thereof, for the words “as provided by section 121:” of the words “as provided by subparagraph (i) of paragraph (b) of section 79B or permitted by court under section 142D:”
- 10 (2) by the substitution, in subsection (2) thereof, for the words “as provided by section 121 and which is not so included” of the words “as provided by subparagraph (ii) of paragraph (b) of section 79B and which is not so included or not permitted by court under section 142B”; and
- (3) by the insertion, immediately after subsection (2) thereof, of the following subsection: -

15 “(3) Where an order is made under this section, the court shall take into consideration any order made under section 142B.”.

20 **21.** Notwithstanding the repeal of Chapter XA (section 79A), Chapter XVIIIA (sections 142A, 142B, 142C, 142D, 142E, 142F, 142G, 142H, and 142I) and section 80A of the principal enactment (in this section referred to as the “repealed provisions”), all actions and matters filed in the District court and pending on the day immediately preceding the date of commencement of this Act, in respect of which –

- 25 (a) a date for pre-trial hearing has already been fixed; or
- (b) any pre-trial step has already been taken under the repealed Chapter XVIIIA,

shall be dealt with under the repealed provisions.

30 **22.** 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

