



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

**MAINTENANCE CLAIMS
(RECIPROCAL ENFORCEMENT)
ACT, No. 54 OF 1998**

[Certified on 27 th November , 1998]

Printed on the Order of Government

Published as a Supplement to Part II of the **Gazette of the Democratic Socialist
Republic of Sri Lanka** of November 27, 1998

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA

TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO I

Price : Rs. 9.00

Postage : Rs. 3.50

*Maintenance Claims (Reciprocal Enforcement)
Act, No. 54 of 1998*

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L.D.—O. 34/83.

AN ACT TO GIVE EFFECT TO THE UNITED NATIONS CONVENTION ON THE RECOVERY ABROAD OF MAINTENANCE, SIGNED AT NEW YORK ON 20TH JUNE, 1956; TO MAKE PROVISION FOR FACILITATING THE RECOVERY OF MAINTENANCE BY OR FROM PERSONS IN SRI LANKA FROM OR BY PERSONS IN ANY OTHER COUNTRY; TO EXTEND THE JURISDICTION OF MAGISTRATE'S COURTS TO HEAR APPLICATIONS AGAINST PERSONS OUTSIDE SRI LANKA AND FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO

WHEREAS Sri Lanka is a contracting party to the United Nations Convention on the Recovery Abroad of Maintenance, signed at New York on June 20th, 1956 :

Preamble.

AND WHEREAS, Sri Lanka ratified the aforesaid Convention of 7th August, 1958.

AND WHEREAS it is necessary and expedient to make legislative provision for the enforcement in Sri Lanka of the said Convention :

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Maintenance Claims (Reciprocal Enforcement) Act, No. 54 of 1998, and shall be deemed for all purposes to have come into operation on August 7, 1958 being the date on which Sri Lanka ratified the United Nations Convention on the Recovery Abroad of Maintenance, signed at New York on 20th June, 1956.

Short Title and date of operation.

2. (1) The Minister may by Order published in the Gazette declare, that the provisions of this Act shall apply—

Application of the Act.

(a) in respect of every country as specified in such Order where—

(i) such country is a country to which the Maintenance Convention applies ; or

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- (ii) an agreement has been entered into between Sri Lanka and such country extending the application of the provisions of this Act in respect of that country ; or

- (b) to the Hongkong Special Administrative Region of the People's Republic of China, where an agreement has been entered into between Sri Lanka and such Special Administrative Region extending the application of the provisions of this Act, in respect of that Region.

(2) A country or the Special Administrative Region declared by Order made under subsection (1), shall hereinafter be referred to as a "specified country".

Application by a person in Sri Lanka for recovery of maintenance or for enforcement or variation of a maintenance orders made in a specified country.

3. (1) Where a person in Sri Lanka (hereinafter in this section referred to as the "applicant") claims to be entitled to recover in a specified country maintenance from another person, (hereinafter referred to as the "respondent") and the respondent is for the time being subject to the jurisdiction of that specified country, the applicant may apply to the Secretary to the Ministry of the Minister (hereinafter referred to as the "Secretary") in accordance with the provisions of this section, to have the claim for the recovery of maintenance from the respondent, transmitted to that specified country.

(2) Where an applicant seeks to—

- (a) enforce an order ; or

- (b) vary an order,

made in a specified country, for the payment by a respondent of maintenance to the applicant and the respondent is for the time being residing in that country, the applicant may apply to the Secretary in accordance with the provisions of this section, to have the claim for enforcement or variation as the case may be, of that order, be transmitted to that specified country.

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(3) On receipt of an application under subsection (1) or subsection (2), as the case may be, the Secretary shall transmit the application together with any accompanying documents, to the appropriate authority in such specified country.

4. (1) Where the Secretary receives from the appropriate authority in a specified country, an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in Sri Lanka, he shall send the application together with any accompanying documents to the Registrar of the Magistrates Court within the jurisdiction of which that other person is residing.

Application by persons in specified country for recovery of maintenance in Sri Lanka.

(2) If a summons to appear before a Magistrate's Court having jurisdiction to hear the application cannot be duly served on the other person, the Registrar of the Court shall, subject to subsection (3), return the application and the accompanying documents to the Secretary with a statement that such other person is not residing within the jurisdiction of that court and such persons whereabouts are not known. The Secretary shall thereupon return the application and the accompanying documents to the appropriate authority in the specified Country.

(3) If the Registrar of a Magistrate's Court to whom the application is sent in pursuance of subsection (1) of this section, is satisfied that the other person is residing within the jurisdiction of another Magistrate's Court in Sri Lanka, he shall send the application and all the accompanying documents to the Secretary informing the Secretary of such fact and the Secretary shall transmit such application and the accompanying documents to the Registrar of that other Magistrates Court.

(4) The Registrar of the Magistrate's Court to whom the application is sent under subsection (3), shall proceed as if it had been sent to him under subsection (1).

(5) An application made under this section shall—

- (a) be treated as an application for an order under section 2 of the Maintenance Ordinance and sections 3, 4 and 5 of that Ordinance shall apply in relation to such application and any order made in pursuance thereof ; and
- (b) be proceeded with as if the applicant was present in person before the Court.

(6) When a Magistrate's Court makes an order on that application, the Registrar shall register the order in a register to be maintained for that purpose.

(7) Payment of any sum due under a registered order shall, while the order is registered in a Magistrate's Court, be made in such manner as may be determined by the Magistrate and sections 8A and 8B of the Maintenance Ordinance shall not apply in relation to such registered order.

Enforcement of an order made in a specified country.

5. (1) Where the Secretary receives from the appropriate authority in a specified country, an application made by a person in that country to recover maintenance from a person who is for the time being residing in Sri Lanka on any order made by a court in that country, he shall send such application with a certified copy of the order sought to be enforced together with any other accompanying documents, to the Registrar of the Magistrate's Court within the jurisdiction of which the person who is liable to make payment under such order, is residing.

(2) On receipt of an application under subsection (1), it shall be the duty of the Registrar to register such order in a register to be maintained for that purpose, and thereafter have a copy of such registered order to be served on the person who is liable to make payment under such order.

(3) Where the Registrar of the Magistrate's Court to whom an application is sent under subsection (1) of this section, is satisfied that the person liable to make payment under the order sought to be enforced—

- (a) is residing within the jurisdiction of any other Magistrate's Court in Sri Lanka, he shall return the application, the copy of the certified order and all other accompanying documents to the Secretary informing the Secretary of such fact, and the Secretary shall transmit the application, the copy of the certified order and all other accompanying documents to the Registrar of that other Magistrate's Court; or
- (b) is not residing within the jurisdiction of such Magistrate's Court and the whereabouts of such person is not known, he shall return the application, copy of the certified order and all other accompanying documents to the Secretary, who shall transmit them back to the specified country from which the application was sent.

(4) Payment of any sum due under an order registered under subsection (2), shall, while the order is registered in a Magistrate's Court, be made in such manner as may be determined by the Magistrate, and sections 8A and 8B of the Maintenance Ordinance shall not apply in relation to such registered order.

6. Where the application received by a Magistrate's Court under subsection (1) of section 4 of this Act is in respect of an illegitimate child it shall be sufficient for the purpose of section 6 of the Maintenance Ordinance to prove that the person from whom recovery of maintenance is being sought has, within the twelve months next after the birth of the child to whom the application relates, paid money for its maintenance in pursuance of a requirement of the law applied by a court outside Sri Lanka.

Application in respect of an illegitimate child.

TRANSFER, ENFORCEMENT, VARIATION AND REVOCATION OF
REGISTERED ORDERS

Transfer of
Orders.

7. (1) Where the Registrar of the registering court is of opinion that the payer under a registered order has ceased to reside within the jurisdiction of that Court, then unless he is of opinion that the payer has ceased to reside in Sri Lanka, he shall subject to subsection (2), send a certified copy of the order and the related documents to the Secretary.

(2) Where the Registrar of the registering court is of opinion that the payer is residing within the jurisdiction of another Magistrate's Court, in Sri Lanka, he shall transfer the order to the Secretary, informing the Secretary of such fact and the Secretary shall transfer the documents to the Registrar of the relevant court. Subject to subsection (3), the Registrar of that court shall register the order in a register to be maintained for that purpose and shall take necessary steps to have a copy of such order to be served on the payer.

(3) Before registering an order in pursuance of subsection (2), the Registrar of the court shall take such steps as he thinks fit for the purpose of ascertaining whether the payer under the order is residing within the jurisdiction of the court, and if after taking these steps he is satisfied that the payer is not so residing, he shall return the certified copy of the order and the related documents to the Secretary.

(4) Where a certified copy of an order is received by the Secretary under this section together with a notice signed by the Registrar that the payer has ceased to reside in Sri Lanka, the Secretary shall return the copy of the order and the related documents to the appropriate authority in the specified country.

Enforcement of
Orders.

8. (1) A registered order which is registered in a court other than the court by which the Order was made may be enforced as if it had been made by the registering court and as if that court has jurisdiction to make it, and proceedings for or with respect to the enforcement of any such order may be taken in accordance with this subsection but not otherwise.

(2) A Magistrate's Court in which an order is registered under this Act, and the officers thereof, shall take all such steps as may be necessary for enforcing the order.

9. (1) Where the Secretary receives from the appropriate authority in a specified country an application by a person in that country for the variation of a registered order, he shall send the application together with any documents accompanying it to the Registrar of the registering court.

Variation of a registered order.

(2) The Registrar of the registering court, shall treat the application transmitted to him under subsection (1) as if it were an application for the variation of the order to which the application relates, and the court hearing the application shall proceed as if the applicants were before the court.

10. (1) Where a registered order is registered in a court other than the court by which the order was made, the registering court shall have the power to vary or revoke the order as if it had been made by the registering court and as if that court had jurisdiction to make it.

power to vary an order not made by the registering court.

(2) Where the registering court revokes a registered order it shall cancel the registration.

(3) Where the respondent to an application for the variation or revocation of a registered order, does not appear at the time and place appointed for the hearing of the application, but the court is satisfied—

(a) that the respondent is residing outside Sri Lanka; and

(b) that adequate notice of the making of the application and of the time and place aforesaid has been given to the respondent,

the court may proceed to hear and determine the application at the time and place appointed for the hearing or for any adjournment of hearing, in like manner as if the respondent had appeared at that time and place.

(4) Where a Magistrates Court makes or refuses to make an order varying or revoking a registered order made by another Magistrate Court, an aggrieved person shall have the right of appeal against the order or refusal as he would have if the registered order had been made by the first mentioned court.

Admissibility of
evidence given in
specified country.

11. (1) A statement contained in —

- (a) a document, duly authenticated, which purports to set out or summarise evidence given in proceedings in a court in a specified country ; or
- (b) a document, duly authenticated, which purports to set out or summarise evidence taken in such a country for the purpose of proceedings in any court in Sri Lanka, whether in response to a request made on behalf of such a court or otherwise; or
- (c) a document, duly authenticated, which purports to have been received in evidence in proceedings in a court in such a country, or to be a copy of a document so received,

shall in any proceedings in a Magistrate's Court arising in pursuance of an application sent to that court under this Act, be admissible as evidence of any fact stated therein, to the same extent as oral evidence of that fact is admissible in those proceedings.

(2) A document purporting to set out or summarise evidence given as mentioned in subsection (1) (a) or taken as mentioned in subsection (1) (b), shall be deemed to be duly authenticated, for the purposes of that subsection, if the document purports to be certified by the Judge, Magistrate or other person before whom the evidence was given or, as the case may be, by whom it was taken, to be the original document setting out or recording, or as the case may be, summarising that evidence or a true copy of that document.

(3) A document purporting to have been received in evidence as mentioned in subsection (1) (c), or to be a copy of a document so received, shall be deemed to be duly authenticated for the purposes of that subsection, if the document purports to be certified by a Judge, Magistrate or officer of the court in question receiving such document to have been, or to be a true copy of a document which has been so received.

(4) It shall not be necessary in any such proceedings to prove the signature or official position of the person purporting to have given such certificate.

(5) Nothing in this section shall affect the admission in evidence of any document which is admissible in evidence apart from this section.

12. (1) A court in Sri Lanka may for the purpose of any proceedings in that court under this Act in pursuance of an application received by the Secretary from a specified country, request the Secretary to make to the appropriate authority or court in the specified country, a request for the taking in that country of the evidence of a person residing therein relating to matters connected with the application.

Obtaining of evidence for purpose of proceedings in Sri Lanka.

(2) A request made by a court under this section shall —

- (a) give details of the application in question;
- (b) state the name and address of the person whose evidence is to be taken; and
- (c) specify the matters relating to which the evidence of such person is required.

13. (1) Where a request is made to the Secretary by or on behalf of a court in a specified country to obtain the evidence of a person residing in Sri Lanka, relating to matters connected with an application to which section 3 of this Act applies, the Secretary shall request such court within whose

Taking of evidence at request of Court in specified country.

jurisdiction such person resides, to take the evidence of that person relating to such matters connected with that application as may be specified in the request.

(2) The Court by which a request under subsection (1) is received from the Secretary shall have the power to take the evidence and after giving notice to such persons of the time and place at which the evidence is to be taken, and in such manner as it thinks fit, shall take the evidence of the person named in the request relating to the matters specified therein and the evidence so taken shall be sent by the court to the court in the specified country by or on behalf of which the request referred to in subsection (1) was made.

(3) If the summons to appear before court, within whose jurisdiction the person whose evidence is to be obtained resides, cannot be duly served on such person, the Registrar of the Court shall, return the application making such request to the Secretary, with a statement that such person is not residing within the jurisdiction of that court and the whereabouts of the person are not known. The Secretary shall thereupon return the documents connected with the request made, to the court in the specified country by or on behalf of which such request was made under subsection (1).

(4) Where any person, not being the person by whom the application mentioned in subsection (1) of section 3 was made, is required by virtue of this section to give evidence before a court in Sri Lanka, the court may order that there shall be paid out of moneys provided by the State, such sums as appear to the court to be reasonably sufficient to compensate that person for the expense, trouble or loss of time properly incurred in, or incidental to, this attendance.

(5) The provisions of Chapters V and VI of the Code of Criminal Procedure Act, No. 15 of 1979 which provide for compelling the attendance of witnesses and other related matters, shall apply in relation to a Magistrates Court to which a request under subsection (1) is made, as if the application to which the request relates were a complaint to be heard by that Court.

14. Where the Secretary has received, on any date after August, 7, 1958 but prior to the date on which this Act is certified, from the appropriate authority in a country to which the Maintenance Convention applies, an application by a person in that country for the recovery of maintenance from another person who is for the time being residing in Sri Lanka, such country shall be deemed to be a specified country in respect of which an Order has been made under section 2 of this Act, with effect from the day immediately preceding the date on which such application was received by the Secretary, and accordingly, the Secretary shall send such application to the Registrar of the Magistrate's court within the jurisdiction of which the person from whom maintenance is sought to be recovered resides, to be dealt with under this Act.

Transitional provision.

15. Every reference in this Act to a "Magistrate's Court" in the case of an application for maintenance relating to a Muslim who is governed by the provisions of the Muslim Marriage and Divorce Act (Chapter 115), shall be read and construed as a reference to the relevant Quazi appointed under that Act.

Savings in respect of applications relating to Muslims.

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

Sinhala text to prevail in case of inconsistency

17. In this Act —

Interpretation.

"certified copy" in relation to an order of a court means a copy of the order certified by a proper officer of the court to be a true copy;

"Maintenance Convention" means the United Nations Convention on the Recovery Abroad of Maintenance signed at New York on 20th June, 1956;

"payer" in relation to a registered order means the person liable to make payments under the order;

"registering court" in relation to a registered order, means the court in which that order is for the time being registered under this Act;

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“registered order” means an order which is for the time being registered in a court in Sri Lanka under this Act; and

“related documents” means —

- (a) the application in pursuance of which the order was made;
- (b) a statement giving such information as he possesses as to the whereabouts of the payer; and
- (c) any relevant documents in his possession relating to the case.

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