IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

S.C. (SD) No. 80/2024 and S.C. (SD) 81/2024

"RECIPROCAL RECOGNITION, REGISTRATION AND ENFORCEMENT OF FOREIGN JUDGMENTS" BILL

BEFORE:

S. Thurairaja, PC	-	Judge of the Supreme Court
K. Kumudini Wickremasinghe	-	Judge of the Supreme Court
K. Priyantha Fernando	-	Judge of the Supreme Court

S.C. (SD) No. 80/2024

Petitioner	:	Aruna Laksiri Unawatuna No. 2, Buddhist Centre Road, Colombo 10.
Counsel	:	Appearing in-person.

S.C. (SD) No. 81/2024

Petitioner	:	Y. D. U. I. Dissanayaka No. 118/B, Nadurana Road, Dandeniya, Eheliyagoda.
Counsel	:	Krisantha Nissanka.

Respondents in all cases

1. Hon. Attorney General
   Attorney General's Department,
   Colombo 12.

2. Hon. Wijeyadasa Rajapakshe
   Honorable Minister,
   Ministry of Justice.

Counsel for the State : Ms. Hasini Opatha, SSC with Shamanthi Dunuwille, SC and Abigail Jayakody, SC.

A Bill titled **"Reciprocal Recognition, Registration and Enforcement of Foreign Judgments"** (hereinafter referred to as the "Bill") was published in the Government Gazette on 07th June 2024. It was thereafter placed on the Order Paper of the Parliament on 19th June 2024.

The Bill provides for —

PART I	APPLICATION OF THE ACT
PART II	RECOGNITION, REGISTRATION AND ENFORCEMENT OF FOREIGN JUDGMENTS
PART III	GENERAL PROVISIONS

Three Petitioners in SC. SD. 80/2024, 81/2024 and 83/2024 invoked the jurisdiction of this Court in terms of Article 121(1) of the Constitution in separate Petitions. The Court assembled for hearing on the 4th and 5th July 2024.

SC. SD. 83/2024 was taken up three times in open Court, but the Petitioner was absent and unrepresented. Additionally, the learned Senior State Counsel took up a preliminary objection that the Petitioner had not delivered a copy of the Petition to the Speaker as required by Article 121(1) of the Constitution. Accordingly, SC. SD. 83/2024 was dismissed *in limine.*

Both Petitioners sought a determination from this Court to the effect that the impugned Bill cannot be enacted into law unless the procedure laid down in Articles 83 and/or 84 of the Constitution read with Article 80 of the Constitution is followed by Parliament and the same is approved by not less than two-thirds of the whole number of Members of Parliament and subsequently approved by the People at a Referendum.

The Petitioner in SC. SD. 80/2024 averred very generally and inefficaciously that clauses 2, 3, 4, 5, 6, 7, 8, 9, 10. 11, 13, 14, 15, 16, 17, 20 and 23 of the Bill to be violative of Articles 1, 3, 4, 9, 10, 12(1), 12(2), 13(5), 14(1)(e), 14(1)(f), 14(1)(g), 14(1)(i), 18, 19, 22, 24, 27(2)(a), 27(3), 27(6), 27(10), 27(11), 27(12), 27(13), 28(a), 75, 76, 83, 105, 118, 125, 148, 157 and 170 of the Constitution, without adequate explanation.

The Petitioner vehemently highlighted the potential dangers if judgments of foreign jurisdictions were to be applied in Sri Lanka. It was his position that the Bill as a whole amounted to a relinquishment of legislative power from the Sri Lankan Parliament and an assignment of the same to foreign nations. In addition, the Petitioner averred that this Bill seeks to import foreign judgments grounded in alien laws and traditions without first inquiring as to their compatibility with our own Constitution, which he alleged to be violative of the aforementioned Constitutional provisions, particularly, Article 9. The Petitioner further raised concerns as to how certain provisions of the Bill may affect language rights.

This Court observes that submissions of both Counsel for the Petitioners displayed great congruence in their general misapprehensions of the scope of the Bill.

The Petitioner in SC. SD. 81/2024 maintained that the proposed Bill raised significant constitutional concerns in respect of Articles 1-11, 23, 24, 156 and 157A of the Constitution of Sri Lanka. The Petitioner, *inter alia*, contended certain clauses of the Bill to be those that *"transfer judicial sovereignty to foreign jurisdictions"*, challenging the unitary nature and promoting separatism by introducing regional inconsistencies as it would operate to integrate foreign judgements without proper legislative oversight. He further emphasised how the Bill allows the enforcement of foreign judgments based on legal principles incompatible with Buddhist values and how the introduction of foreign legal frameworks, such as Sharia law, could undermine the constitutional duty to protect Buddhism.

Apart from these rather speculative claims, the Petitioner, in his written submissions, overstepped to suggest that, in drafting and approving this particular Bill, the Attorney-General, Legal Draftsman, relevant Ministers, and Members of Parliament have all violated the oath taken when assuming public office and also claimed such conduct could attract liability under *"State Liability in Delict Act[1] Section 2 read with Article 9"*. He overstepped further to suggest that relevant Ministers and Members of Parliament could even be liable under *"Article 9 read with Section 289 of the Penal Code"* for wilfully neglecting or omitting to perform their statutory duties for their part in enacting legislation contrary to the constitutional mandate. While this Court does not seek to dignify such malarkey by wasting any judicial time, we wish to sternly emphasise that such insupportable accusations are neither encouraged nor appreciated.

[1] Evidently a reference to State (Liability in Delict) Act, No. 22 of 1969

Having submitted the above, in the concluding paragraph of the written submissions dated 08th July 2024, the Petitioner summarised his concerns as follows:

> *"The proposed Bill for Reciprocal Recognition, Registration, and Enforcement of Foreign Judgments contains several provisions that conflict with Articles 1-11, 156 and 157A of the Sri Lankan Constitution. It undermines the sovereignty of the people, challenges the unitary state, risks the integration of foreign religious legal principles incompatible with Buddhist jurisprudence, and violates judicial independence through the enforcement of potentially misinformed foreign judgments. The application of Article 85(2) demonstrates the vital role of direct public participation in safeguarding constitutional principlesand [sic] disregarding the right to initiate inherent in the people clearly violates sovereignty . Additionally, the Bill's potential to reintroduce colonial legislation principles from the back yard supporting separatism through foreign judgments and the future risk of misinformed AI-based judgments further underscore its incompatibility with Sri Lanka's constitutional values.[sic]"*[2]

Despite the irrational nature of these submissions, this Court, not without significant effort, managed to identify a handful of concerns that resembled logical arguments. Before we consider the same, it may be both necessary and appropriate to appreciate the underlying purpose and effect of the proposed Bill as well as the existing framework for the enforcement of foreign judgments in Sri Lanka.

EXISTING FRAMEWORK IN SRI LANKA AND ANALOGOUS FRAMEWORKS ELSEWHERE

The existing Sri Lankan framework, itself a rich amalgamation of diverse legal traditions and often cited as a mosaic of different laws inherently a product of its history, is not

[2] Reproduced *verbatim* for accuracy

unfamiliar with the concept of reciprocal recognition of judicial decisions beyond its geographical borders.

The present framework is primarily shouldered by the **Reciprocal Enforcement of Judgments Ordinance ('REJO')** enacted into law by **Ordinance No. 41 of 1921**, which made provisions to allow for the enforcement in Ceylon of the judgments obtained in the superior courts of the United Kingdom[3] and of other parts of her Majesty's Realms and Territories.[4] Accordingly, **REJO** makes provisions for the enforcement of judgments of English High Courts as well as for, in certain conditions, the authorisation by a Minister to a Court to extend the application of the Ordinance to a variety of jurisdictions by Order published in the Gazette.

The Hon. Attorney-General, in written submissions dated 10th July 2024, has stated that, over the past century, the REJO has seen its provisions extended by virtue of the Minister's exercise of power to numerous former and current territories of the United Kingdom, including, but not limited to, Hong Kong, Mauritius, New South Wales, and others.

REJO's applicability, however, is confined to judgments where money is payable and arbitral awards, such concentration allowing for, or at least making provision for, the effective facilitation of cross-border commerce and protection of creditor rights in international transactions.

It must be noted that the **Enforcement of Foreign Judgments Ordinance No. 3 of 1937 ('EFJO')** was subsequently designed to facilitate the cross-enforcement of foreign and Ceylonese judgments, though **EFJO** was at no point in time formally brought into force.

[3] Defined by section 3 of REJO to mean the High Court of the United Kingdom.

[4] Deemed by section 6(2) to include any territory which is under Her Majesty's protection, or respect of which a mandate is being exercised by the Government of any part of Her Majesty's Realms and Territories.

Looking beyond Sri Lankan shores, we see the practice of foreign jurisdictions that have embraced the application of reciprocal recognition and foreign judgment enforcement and the effects of such adoption upon facilitating international legal cooperation and certainty.

With the development of communities across shores, where the entire world acts as a global village, the existence of such a framework in our domestic law is desirable.

The Hon. Attorney-General, in written submissions dated 10th July 2024, presented a brief overview of the frameworks in jurisdictions including the European Union, the United Kingdom, Canada, Australia, the United States of America, Hong Kong, and Singapore.

NECESSITY TO REPLACE THE EXISTING FRAMEWORK

The positive impression of such frameworks upon international legal cooperation, global access to justice and the health of a country's cross-border transactions is representative of the need for such a framework in Sri Lanka. Returning to our domestic jurisdiction, there is an evident imperative not only for a similar framework rooted in reciprocity but also one that embodies the dynamic essence of international law and aligns with the evolving pace and progressive developments of neighbouring jurisdictions.

In this light, while dutifully acknowledging the role of **REJO** and, to a superficial extent the **EFJO**, in setting the preliminary foundations for the recognition of foreign judgments, the glaring anachronism can hardly be ignored.

The **REJO**, rooted in a Ceylon that once belonged to the Realms and Territories of the United Kingdom, is undeniably a relic of its era. In the last century since **REJO**'s enactment, the geopolitical landscape has dramatically shifted. The United Kingdom no longer holds its former status as an empire, and Sri Lanka is no longer a part of its Realms and Territories. Most of the jurisdictions to which the **REJO**'s provisions were extended have

also gained independence. These changes have introduced uncertainty and confusion regarding the effectiveness and applicability of the **REJO** in modern times. The Attorney-General, exemplifies this by citing the case of ***Lalwani v. Indian Overseas Bank***[5] which spotlighted the ambiguity around the **REJO**'s applicability to judgments from territories that have since changed their political status.

REJO's limited scope as a result of its confinement to judgments involving monetary obligations, coupled with the significant geopolitical changes over the past century, has rendered the Ordinance increasingly inadequate for contemporary needs.

Moreover, the **REJO**'s procedural complexities and outdated rules have led to numerous challenges for practitioners. For instance, the rules governing practice and procedure promulgated under section 5 of the **REJO** in the manner provided for by section 49 of the **Courts Ordinance** are often seen as confusing and time-consuming. Similarly, the absence of clear provisions for appeals further complicates the enforcement process, creating lacunas in legal certainty.

Compellingly, the **Hague Conventions on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters** of **1971** and recently of **2019** aim to enhance global access to justice and promote fair multilateral trade, investment, and mobility through cooperation among diverse legal systems. To achieve this, it establishes a reciprocal framework for the recognition and enforcement of foreign court judgments in civil and commercial matters. This framework streamlines legal proceedings, reduces associated costs and time, and empowers both businesses and individuals to make informed decisions about where to initiate legal actions by considering the enforceability of judgments in other Contracting States. By facilitating smoother cross-border transactions and legal certainty, the Convention fosters a more predictable and reliable

[5] [1998] 3 Sri LR 197

international legal environment, thereby contributing to the stability and growth of the global economy.

While Sri Lanka is a signatory to the **1971 Hague Convention**, its principles remain unwoven into the fabric of our domestic law in the absence of necessary implementing legislation – a gap which the "**Reciprocal Recognition, Registration and Enforcement of Foreign Judgments" Bill** is designed to bridge.

OBJECT, EFFECT AND APPLICATION OF THE BILL

The reasons for and the intended effect of the proposed Bill set out in the Preamble are as follows:

> *"AN ACT TO MAKE PROVISION FOR THE RECIPROCAL RECOGNITION, REGISTRATION AND ENFORCEMENT IN SRI LANKA OF JUDGMENTS OF COURTS OF OTHER COUNTRIES; AND TO REPEAL THE ENFORCEMENT OF FOREIGN JUDGMENTS ORDINANCE (CHAPTER 93) AND THE RECIPROCAL ENFORCEMENT OF JUDGMENTS ORDINANCE (CHAPTER 94); AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO."*

Clause 2 of the Bill provides for the Minister to extend the provisions to judgments of foreign courts by order published in the Gazette where the Government of Sri Lanka and the government of any such foreign country for the reciprocal recognition, registration and enforcement of their judgments.

The Bill seeks to recognise limited types of judgments only where such judgments are final and conclusive between parties and satisfy one or more of the following conditions specified in Clause 3 of the Bill:

"3(1)(a)

(i) the judgment-creditor or the judgment-debtor was a resident of the country of the original court at the time such judgment-creditor or the judgment-debtor, as the case may be, became a party to the proceedings in the original court;

(ii) the judgment-debtor, if he is a natural person, had his principal place of business in the country of the original court at the time that judgment-debtor became a party to the proceedings in the original court;

(iii) the judgment-creditor is the person who has obtained the judgment based on his claim or claim in reconvention in an action;

(iv) the judgment-debtor has maintained a branch, agency or other establishment with or without separate legal personality in the country of the original court at the time such judgment-debtor became a party to the proceedings in the original court;

(v) the judgment-debtor has agreed to submit or submitted to the jurisdiction of the original court;

(vi) the property relating to the judgment, whether movable or immovable is situated in Sri Lanka or in the country of the original court at the time of the proceedings in the original court;

(vii) the applicant has derived any right, interest, benefit, title, status or entitlement under the judgment of the original court, as at the date of the judgment or thereafter..."

When it comes to judgments of foreign courts for the dissolution or annulment of a marriage or separation of parties to a marriage, the Bill restricts the recognition,

registration and enforcement of such judgments to marriages registered under the **Marriage Registration Ordinance** (also known as the **General Marriages Ordinance**) where the following conditions are satisfied:

"3(1)(b)

(i) either party to the marriage was domiciled in such country as at the date of the judgment;

(ii) either party to the marriage was habitually resident in such country for a period not less than one year immediately before the date of the judgment;

(iii) either party to the marriage was a national of such country as at the date of the judgment; or

(iv) both parties have submitted to the jurisdiction of such court."

Marriages entered into under special laws in operation within Sri Lanka are clearly precluded from the ambit of the Bill. Further limiting its application, Clause 3(2) stipulates that *"[t]he provisions of this Act shall not apply to any tax, charge, fine or other penalty payable under a judgment of a court of a foreign country"*. Additionally, Clause 23, too, confines the application of the Bill by the introduction of various limitations to the definition of the term 'judgment'.

Clause 4 of the Bill sets out the procedure for applications to be made for the recognition, registration and enforcement of foreign judgments within ten years from the date of the final judgment, with discretion granted to the court to entertain belated applications where valid reasons have been provided. Clause 5 provides that the registering court (defined under Clause 23) shall proceed to register the foreign judgment where such court is *prima facie* satisfied at the date of application that *"(a) such judgment is a judgment to which this Act applies; (b) the applicant has derived any right, interest, benefit, title, status*

or entitlement under the judgment given by the original court; and c) the application has been made within the period specified in section 4."

Very clearly, the framework proposed to be established by the Bill is neither overbroad nor all-encompassing. It seeks to afford an expedient enforcement mechanism towards the enforcement of foreign judgments obtained with regard to certain commercial and matrimonial matters subject to a series of limitations.

The Petitioners contended, as I adverted to earlier, that the provision of the Bill would operate to erode the sovereignty of the people and threaten Buddhist jurisprudence by importing or establishing foreign laws and/or foreign principles in Sri Lanka without sufficient judicial oversight, with one Petitioner going so far as to contend that this would promote separatism.

In support of some of these propositions, the Petitioners relied on **Determination on the Coronavirus Disease 2019 (Covid-19) (Special Provisions) Bill.**[6] However, this Court is in agreement with the learned Senior State Counsel that this is not applicable to the present Bill. This is so for the simple reason that the instant Bill operates to recognize, register and enforce foreign judgments that are ***final and conclusive as between parties to such judgment***; that too, on a minimal scope. This recognition is purely afforded to private and party-specific judgments, and such registered foreign judgments do not bind the courts, nor do they create any precedent. As such, there is absolutely no importation of foreign legal principles or law into our own *corpus juris.*

The Petitioners further placed emphasis on a perceived lack of judicial oversight in 'importing' foreign judgments under the proposed Bill. Clause 7 of the Bill enables objections to be raised by any respondent to an application made for the recognition,

[6] SC. SD. No. 24/2021

registration and enforcement of a judgment for the dissolution or annulment of marriage or for the separation of parties to a marriage. Such objections are to be made on the grounds of non-compliance with the requirements set out in Clause 4, fraud, or misrepresentation of facts in making the application under Clause 4. Clause 12(2) of the Bill provides for any person dissatisfied with any recognition awarded to or order made with regard to an application for the recognition, registration and enforcement of a foreign judgment for the dissolution or annulment of marriage or for the separation of parties to a marriage to appeal to the relevant High Court exercising appellate jurisdiction.

Furthermore, Clause 11 of the Bill provides for the registering court to set aside a registered judgment any time after such registration upon an application made to that effect or *ex mero motu*, on grounds set out therein.

Very clearly, these concerns of the Petitioners have no merit for there is neither an 'importation' or 'establishment' of foreign judgments nor a lack of judicial oversight in recognizing, registering and enforcing foreign judgments.

Much of the Petitioners' submissions were conjectural and emanated from this fundamental misapprehension as to the object and effect of the Bill. As such, this Court sees no necessity to specifically deal with any contentions relating to the purported 'importation and establishment of foreign legal principles' under the proposed Bill as these concerns arise out of the misapprehension discussed hereinabove.

CLAUSES CHALLENGED BY THE PETITIONERS

The two Petitioners have challenged as inconsistent with the Constitution the whole of the proposed Bill save for Clauses 1, 12, 18, 19, 21, 22 and 24. In order to rectify certain inconsistencies so highlighted, the Hon. Attorney-General proposed various amendments to be moved at the committee stage. For the sake of clarity and convenience, we shall first dispense with the same before approaching other clauses.

Clause 2

The impugned segment of Clause 2 of the Bill provides as follows:

"(1) Where-

(a) (i) the Government of Sri Lanka and the Government of any foreign country enter into any treaty as respects the reciprocal recognition, registration and enforcement of judgments of the courts of Sri Lanka and of such foreign country; or

(ii) any written law in force on the day immediately preceding the appointed date provides for the reciprocal recognition, registration and enforcement in Sri Lanka of judgments of the courts of a foreign country; and

(b) the Minister is satisfied that by extending the provisions of this Part of this Act to judgments of the courts of such foreign country a substantial reciprocity of treatment will be assured as respects the recognition, registration and enforcement in such foreign country of judgments of the courts of Sri Lanka,

the Minister may, by Order published in the Gazette, declare that the provisions of this Part of this Act shall extend to the judgments of such courts of that foreign country as are specified in such Order..."

The Petitioners in SC. SD. 80/2024 and SC. SD. 81/2024 presented contentions pertaining to the supposed unchecked exercise of discretion by the Minister to extend provisions of the Bill to judgments of foreign jurisdictions in the absence of legislative oversight and/or parliamentary approval, thereby infringing the legislative sovereignty of the people.

In a demonstration of the Petitioners' incomplete understanding of the Bill and present framework, the Petitioners fail to appreciate that such power afforded to the Minister by

the proposed Bill is already enshrined within the current paradigm of **REJO**, delineated by Section 6 of the Ordinance. As discussed in the history, such powers have, in fact, been formerly exercised by the Minister by Order made in the Gazette to extend **REJO** to several jurisdictions outside the United Kingdom within its Realms and Territories.

In any event, the protection of legislative sovereignty in the course of exercising such power is manifested in Clause 2(5)(a) which serves as a bulwark and mandates parliamentary approval of any such Order within three months of publication, which reads:

> *"Every Order made by the Minister shall, within 3 months after its publication in the Gazette, be brought before Parliament for approval."*

This is further substantiated by the subsequent provision, Clause 2(5)(b), which provides for any disapproved Orders to be rescinded from the date of such disapproval.

The Petitioners further speculate, erroneously, that the Bill, particularly through the Preamble and Clause 2, promotes separatism by allowing the entry of foreign judgments, thereby creating a pathway for separatist ideologies to permeate the domestic legal sphere. This claim exemplifies, yet again, the Petitioners' misconceived concerns. It must be reiterated that the Bill does not facilitate the infiltration of foreign legal principles, nor does it create legal precedents applicable within the domestic jurisdiction by adjudicating on the merits of foreign judgments.

On the contrary to the Petitioners' assertions, as elucidated by the Hon. Attorney-General, the Bill provides for the recognition, registration, and enforcement of foreign judgments strictly within the bounds of obligations that the State has already undertaken pursuant to an existing international instrument or written law, and contingent upon reciprocal arrangements with the foreign state in question. The foreign judgments subject to recognition and enforcement under the Bill are those that are final and conclusive,

applying exclusively to the parties involved in the original judgment. This ensures that such judgments do not establish legal precedents or bind any external parties. Therefore, the Bill does not facilitate the importation of foreign laws into the domestic legal system, but rather upholds the principles of reciprocity and legal finality, while maintaining the integrity and sovereignty of Sri Lanka's legal framework.

In addition, the Petitioners made extensive submissions as to an inconsistency between the Sinhala and English versions of the Bill. They highlighted the term 'treaty' which is reflected in the Sinhala Bill as 'සම්මුතිය' to be an erroneous translation inconsistent with the language of Article 157 of the Constitution, since the said Article uses the term 'ගිවිසුම' to mean 'treaty'.

To address the same, the following amendments were proposed by the Hon. Attorney-General to be moved at the Committee Stage of the Bill:

<u>1 වන පිටුව,</u> 2 වන වගන්තිය - 19 වන පේළිය ඉවත්කොට ඒ වෙනුවට පහත දැක්වෙන කොටස ඇතුළත් කරන්න:-

"ගිවිසුමකට ඇතුළත් වන අවස්ථාවක දී; හෝ";

<u>2 වන පිටුව</u> - 23 වන පේළිය ඉවත්කොට ඒ වෙනුවට පහත දැක්වෙන කොටස ආදේශ කරන්න:-

"(අ) ඡේදයේ සඳහන් ගිවිසුම හෝ ලිඛිත නීතිය";

If such language inconsistency is allowed to prevail, it would constitute a violation of Article 23 of the Constitution and would require a special majority to be passed in Parliament as an Act of Sri Lanka.

However, where the amendments proposed by the Hon. Attorney-General to be moved at the Committee Stage are implemented, such violation would cease to exist.

Clause 17(1)

Clause 17(1) of the proposed Bill reads as follows:

> *"Where the language of a foreign judgment* ***for the dissolution or annulment of a marriage or separation of the parties to a marriage*** *is in a language other than the English language, such judgment shall be accompanied by* ***a translation thereof in the English language*** *made and signed by an interpreter of the Supreme Court, the Court of Appeal or the High Court, or by a sworn translator or an interpreter of any District Court, Family Court, Magistrate's Court or Primary Court, or by a sworn translator."*

The Petitioner in SC. SD. 80/2024 contended the limitation of the translation requirement in Clause 17 to the matrimonial aspect of the Bill to be violative of the Constitution. In addition, it was also contended that the requirement therein to translate such foreign judgments to English language instead of the languages of the courts, Sinhala and Tamil, as specified in Article 24(1) of the Constitution to be unconstitutional.

Recognizing some merit in this contention, the Attorney-General submitted the following amendment to be moved at the Committee Stage of the Bill in order to rectify the issues raised:

Page 12, Clause 17 Delete lines 13 to 21 (both inclusive) and substitute the following:-

<table><tr><td>Language of the documents produced to the court</td><td>"17. (1) Where the language of a judgment of a court of a foreign country specified in the Order made under section 2 is in a language other than the English language, such judgment shall be</td></tr></table>

> *accompanied by a translation thereof in the language used by the registering court as the language of such court and made and signed by an interpreter of the Supreme Court, the Court of Appeal or the High Court, or by a sworn translator or an interpreter of any District Court, Family Court, Magistrate's Court or Primary Court, or by a sworn translator.";*

Despite this, relying on ***Coomaraswamy v. Shanmugaratne Iyer and Another (1978-79-80)***,[7] it was the Petitioner's position that the proposed amendment does nothing to rectify the issue and alleged that the Hon. Attorney-General has proposed this amendment concealing the fact that "language of the court" and "language used by the court" are different.

This Court is not inclined to agree with this contention of the Petitioner. It is a trite rule of Constitutional interpretation that provisions of the Constitution are to be read not in isolation but rather as a whole, complementing one another. The Proviso to Article 24(1) of the Constitution clearly indicates that the Justice Minister may, with the concurrence of the Cabinet, direct the records and proceedings of any court shall also be in a language other than the language of the Court. Article 24(4), which the Petitioner himself has referred to, provides for the Justice Minister to issue directions permitting the use of English in or in relation to the records and proceeds in any court for all purposes or such purposes the Minister may specify in that order.

[7] 1 SLR 323

Additionally, this Clause has in no way sought to curtail the right set out in Article 24(2) of the Constitution of any party to submit pleadings and documents as well as to initiate and participate in proceedings in either Sinhala or Tamil. Furthermore, under Article 24(3) any judge, juror, party, applicant or legal representative of such party, if not conversant with the language used in a court is entitled to be provided interpretations and translations by the State.

Therefore, Clause 17(1) of the Bill, as it stands, constitutes a violation of Article 24 of the Constitution and would require a special majority to be passed in Parliament as an Act of Sri Lanka.

However, where the amendments proposed by the Hon. Attorney General to be moved at the Committee Stage are implemented, such violation would cease to exist.

Clause 23

Clause 23, the provision which relates to interpretation of the Bill, defined the term 'judgment' as follows:

> *""judgment" means a judgment, decree or order given or made by a competent court of a foreign country which has been specified by the Minister by Order published in the Gazette in terms of section 2 of this Act, but does not include a judgment, decree or order given or made-*
>
> *(a)* ***against any Sovereign State****;*
> *(b) in relation to property settlement in any matrimonial matter;*
> *(c) in proceedings relating to insolvency;*
> *(d) in proceedings relating to winding-up of companies;*
> *(e) in proceedings relating to unsoundness of mind;*
> *(f) in proceedings relating to guardianship, custody or maintenance of a minor, or curatorship of the estate of a minor; or*

(g) in proceedings relating to guardianship and management of the estate of a person of unsound mind;"

The Petitioner in SC. SD. 80/2024 argued that this provision empowered the District Court to interpret what a 'sovereign state' is, which would contravene Article 125 as it is only the Supreme Court that is vested with jurisdiction to interpret the Constitution. *Per contra*, the concern of this Court was that interpreting the term 'sovereign state' involved not constitutional considerations but political ones, which must not be a subject of judicial consideration. This would cause jurisdiction of the District Court to encroach upon the executive province in contravention of Article 4 of the Constitution.

To resolve this, the Attorney-General proposed the following amendment to be moved at the Committee Stage of the Bill:

Page 16, Clause 23 Delete line 4 and substitute the following:-

"(a) against any foreign country specified in an Order made under section 2;".

The Petitioner contended that, even following the proposed amendment, the provision would remain unconstitutional for the reason that the terms 'foreign country' and 'sovereign state' have identical meanings for the purpose of this Bill. This once again demonstrates the Petitioner's propensity to manipulate textual excerpts *a posteriori* to fit preconceived apprehensions regarding the contents of the Bill. The amendment proposes to replace 'sovereign state' with not merely 'foreign country' but 'foreign country specified in an Order made under section 2'.

Therefore, Clause 23 of the Bill, as it stands, constitutes a violation of Article 4 of the Constitution and would require a special majority to be passed in Parliament as an Act of Sri Lanka.

However, where the amendment proposed by the Hon. Attorney General to be moved at the Committee Stage is implemented, such violation would cease to exist.

Clause 3(1)(a)(vi)

Petitioner in SC. SD. 80/2024 contended the Bill to be internally inconsistent for including judgments relating the movable or immovable property within Sri Lanka within the ambit of the Bill under Clause 3(1)(a)(vi), all while excluding judgments relating to matrimonial property settlement by virtue of Clause 23. He further argued enabling foreign judgments to be entered with regard to any property situated within Sri Lanka to be unconstitutional, stating that such application could even cause the *"presumption of innocence to collapse"* where criminal matters are concerned.

The Bill clearly excludes matters of public law from its ambit, and it is axiomatic that this contention of the Petitioner is without merit.

Article 9

Finally, the Petitioners have raised concerns pertaining to the consistency of several provisions of the Bill with Article 9 of the Constitution. However, such concerns are not supported by any sound reasoning by the Petitioners. Further, even upon the Court's own examination of challenged clauses, we find no inconsistency with Article 9 of the Constitution.

THE DETERMINATION OF THE COURT

The determination of the Court as to the constitutionality of the Bill titled **"Reciprocal Recognition, Registration and Enforcement of Foreign Judgments"** is as follows:

1. Sinhala text of Clause 2 of the Bill is inconsistent with the language of Article 157 of the Constitution due to the use of the term 'සම්මුතිය' to mean 'treaty' and shall only be passed with a special majority in Parliament.

However, this inconsistency shall cease if the same is amended as follows:

<u>1 වන පිටුව,</u>
2 වන වගන්තිය - 19 වන පේළිය ඉවත්කොට ඒ වෙනුවට පහත දැක්වෙන කොටස ඇතුළත් කරන්න:-

"ගිවිසුමකට ඇතුළත් වන අවස්ථාවක දී; හෝ";

<u>2 වන පිටුව</u> - 23 වන පේළිය ඉවත්කොට ඒ වෙනුවට පහත දැක්වෙන කොටස ආදේශ කරන්න:-

"(අ) ඡේදයේ සඳහන් ගිවිසුම හෝ ලිඛිත නීතිය";

2. Clause 17(1) of the Bill is inconsistent with Article 24 of the Constitution and shall only be passed with a special majority of Parliament. However, such inconsistency shall cease if Clause 17(1) is amended to read as follows:

   "Where the language of a judgment of a court of a foreign country specified in the Order made under section 2 is in a language other than the English language, such judgment shall be accompanied by a translation thereof in the language used by the registering court as the language of such court and made and signed by an interpreter of the Supreme Court, the Court of Appeal or the High Court, or by a sworn translator or an interpreter of any District Court, Family Court, Magistrate's Court or Primary Court, or by a sworn translator."

3. The definition of 'judgment' in Clause 23, specifically paragraph (a) therein, which states "against any Sovereign State", is inconsistent with Article 4 of the Constitution and shall only be passed by a special majority of Parliament. This inconsistency would cease if the same is amended to read as *"against any foreign country specified in an Order made under section 2;"*.

We have examined the rest of the clauses of the Bill and determined that they are not inconsistent with the Constitution. Petitioners have, in fact, made references to clauses other than those discussed above. However, many such references are made generally with no mention of specific Constitutional provisions, while other references mention many Constitutional provisions without explaining how such provisions are in contravention of the Constitution.

We wish to place on record our deep appreciation of the assistance rendered by the learned Senior State Counsel, whose well-organized written submissions were of immense assistance, and other learned Counsel who made submissions in this matter.

S. Thurairaja, PC
Judge of the Supreme Court

K. Kumudini Wickremasinghe
Judge of the Supreme Court

K. Priyantha Fernando
Judge of the Supreme Court