
STATUTORY INSTRUMENTS

1951 No. 1401

**The Reserve and Auxiliary Forces
(Protection of Civil Interests) Rules 1951**

PART IV

COUNTY COURTS

Exercise of remedies

Proceedings for foreclosure

27.—(1) An application for leave to take a step in proceedings for foreclosure or sale in lieu of foreclosure shall be made on notice in Form 6.

(2) The provisions of Order VIII shall apply with the necessary modifications to the service of the notice as if it were a summons in an action for the recovery of land, so however that the notice shall be served not less than seven clear days before the day fixed for the hearing of the application.

(3) An application for a declaratory order in respect of the taking of such a step as aforesaid shall be made on notice under Order XIII, Rule 1.

Leave to distrain

28.—(1) An application for leave to distrain shall be made by originating application.

(2) The application shall be in Form 7 and the notice required by Order VI, Rule 4 (2) (c) (ii), to be served on the respondent with a copy of the application shall be in Form 8 in lieu of the form prescribed in that sub-paragraph.

(3) A person regularly employed by the applicant to collect the rent of the premises to which the application relates shall be deemed to be a person in the permanent and exclusive employ of the applicant within the meaning of Order VIII, Rule 2 (b) (ii).

(4) Where service is effected otherwise than by a bailiff—

(a) the documents shall be delivered to the respondent or to some person apparently not less than 16 years old at the premises to which the application relates, and

(b) the person effecting service shall make an indorsement to the effect of Form 31 in the County Court Rules, 1936(1), on the copy of the notice retained by him and shall state therein his qualification to serve the documents, and shall, within three days of the date of service or such further time as may be allowed by the registrar, file in the court office the indorsed copy of the notice and any unserved notice.

(5) The day fixed for hearing the application need not be a court day, and the application may be heard and determined by the registrar, in court or in chambers, whether the judge is holding a court or not.

(6) Where leave to distrain for the rent of any premises is required both by the Act and by the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the application shall be made in accordance with these Rules and not in accordance with the Increase of Rent and Mortgage Interest (Restriction) Rules, 1920(2), as amended.

(7) An order giving leave to distrain shall be in Form 9 and shall be served on the applicant and the respondent.

Other remedies

29.—(1) An application—

- (a) under subsection (2) of section 2 for leave to exercise a remedy specified in paragraph (a) of that subsection (other than the levying of distress) or to institute proceedings for possession of mortgaged property, or under subsection (1) of section 25 for leave to exercise a remedy specified paragraph (b) of that subsection; or
- (b) for a declaratory order in respect of the exercise of any such remedy (including the levying of distress) or the institution of any such proceedings under the said subsection (2),

shall be made by originating application.

(2) An originating application for leave to exercise a remedy or to institute proceedings as aforesaid shall be in Form 7 and the notice required by Order VI, Rule 4 (2) (c) (ii), to be served on the respondent with a copy of the application shall be in Form 8 in lieu of the form prescribed in that subparagraph.

(3) Where default has been made in the payment of mortgage money or the performance of a mortgage obligation, then, without prejudice to the generality of any other provisions relating to the joinder of causes of action—

- (a) an application for leave to realise the security by selling the mortgaged property may be joined with an application for leave to take possession, or to institute proceedings for possession, of the property; and
- (b) an application for a declaratory order in respect of the realisation of the security by selling the mortgaged property may be joined with an application for a declaratory order in respect of the taking of possession, or the institution of proceedings for possession, of the property.

(4) The application shall be heard by the judge:

Provided that, with leave of the judge, the registrar may make such order as he thinks just—

- (a) if the judge is not present, or
- (b) if the respondent does not oppose the making of the order.

Power to dispense with notice of doubtful service

30. Where service of an originating application for leave to exercise a remedy or to institute proceedings to which Rule 28 or 29 applies has been effected by delivering the documents to some person other than the respondent, the registrar may, if it appears to him that that person has been entrusted with the management of the respondent's affairs in general, or of the premises or property to which the application relates, dispense with the notice of doubtful service prescribed by Order VIII, Rule 30 (1), and if the respondent does not appear on the day fixed for the hearing, the application may proceed, if the court thinks fit, notwithstanding anything in Rule 30 (2) of that Order.