

INTEREST ON ARREARS OF MAINTENANCE BILL 2001

**COMMITTEE STAGE**

Amendments to be moved by the Honourable Margaret NG

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>By adding -</p> <p><b>"20B. Surcharge on arrears of maintenance</b></p> <p>(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.</p> <p>(2) The application for a surcharge under subsection (1) may be made -</p> <ul style="list-style-type: none"><li>(a) in proceedings instituted for enforcing the maintenance order; or</li><li>(b) in a manner described in subsections (3) to (9).</li></ul> <p>(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -</p> <ul style="list-style-type: none"><li>(a) the name of the judgment creditor and the address for service of the documents relating to the application;</li><li>(b) the name and the address for service or last known address of the judgment debtor;</li><li>(c) the particulars of the maintenance order;</li></ul>

- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrues;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor;  
or
- (b) be sent -
  - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
  - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or
- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4) and -

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336).".

7 By adding -

**"9C. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3) to (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;

- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrues;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor;  
or
- (b) be sent -
  - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
  - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or
- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4) and -

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336)."

8 By adding -

**"53B. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3) to (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;

- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrues;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor;  
or
- (b) be sent -
  - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
  - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or
- (c) be served in such other manner as the court directs.



(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4) and -

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

set aside the order on such terms as it thinks fit.

(11) The amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(14) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336)."

11 By adding -

**"28AB. Surcharge on arrears of maintenance**

(1) Where a maintenance order has been made against a judgment debtor, and the judgment debtor, without reasonable excuse, repeatedly fails to make full and punctual payment in compliance with the maintenance order, the court may, on application made by the judgment creditor, make an order requiring the judgment debtor to pay to the judgment creditor a surcharge in respect of the total arrears of maintenance which accrue on or after the commencement date.

(2) The application for a surcharge under subsection (1) may be made -

- (a) in proceedings instituted for enforcing the maintenance order; or
- (b) in a manner described in subsections (3) to (9).

(3) For the purposes of subsection (2)(b), the application for a surcharge shall be made by a summons supported by an affidavit of the judgment creditor stating -

- (a) the name of the judgment creditor and the address for service of the documents relating to the application;
- (b) the name and the address for service or last known address of the judgment debtor;
- (c) the particulars of the maintenance order;

- (d) the total arrears of maintenance due and unpaid and the date on which the arrears first accrues;
- (e) a request for an order requiring the judgment debtor to pay surcharge at a rate to be decided by the court under subsection (11);
- (f) a request for fixing a date, time and place for the hearing of the application;
- (g) a request for an order requiring the judgment debtor to pay to the judgment creditor the surcharge claimed if the judgment debtor does not appear at the hearing.

(4) On receipt of the summons and affidavit, the court shall fix a date, time and place for the hearing of the application.

(5) The judgment creditor shall serve a sealed copy of the summons and a copy of the affidavit, together with a notice of the hearing, on the judgment debtor.

(6) Without prejudice to any enactment relating to the service of documents and save as is otherwise expressly provided, the summons, affidavit and notice may-

- (a) be personally served on the judgment debtor;  
or
- (b) be sent -
  - (i) if the judgment debtor is represented, by post to the solicitor acting for that judgment debtor, or by leaving the same with the solicitor; or
  - (ii) if the judgment debtor is unrepresented, by post to the address for service given by him or his last known address, or by leaving the same at the address for service or the last known address of that judgment debtor; or
- (c) be served in such other manner as the court directs.

(7) If the judgment debtor fails to appear at the hearing of the application on the date fixed under subsection (4) and -

- (a) if the court is satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor;
- (b) if the court is not satisfied that the summons, affidavit and notice have been duly served on the judgment debtor, it may adjourn the hearing to a date, time and place as it thinks fit.

(8) The judgment creditor shall serve a notice of the adjourned hearing on the judgment debtor.

(9) If the judgment debtor fails to appear at the adjourned hearing on the date fixed under subsection (7)(b), the court may proceed to hear the application and may make an order requiring the judgment debtor to pay a surcharge to the judgment creditor.

(10) If the judgment debtor within a reasonable time after having knowledge of the order made under subsection (7)(a) or (9), applies by summons to set aside the order, the court may, if it is satisfied that there is reasonable excuse for the judgment debtor's failure to -

- (a) appear at the hearing; and
- (b) make full and punctual payment in compliance with the maintenance order,

set aside the order on such terms as it thinks fit.

(11) Subject to subsection (13), the amount of surcharge payable by the judgment debtor under subsection (1) shall not exceed 100% of the total arrears of maintenance calculated from the date on which the arrears first accrued to the date of payment of the surcharge.

(12) If the court makes an order requiring the judgment debtor to pay a surcharge, it shall specify in the order the amount of surcharge payable by the judgment debtor and the date of payment.

(13) If the court grants leave, on the application of a judgment creditor for leave under section 12 of the Ordinance to enforce arrears of maintenance which became due for more than 12 months, the surcharge under subsection (1) is to be calculated from the date specified by the court as being the date on which the judgment creditor is entitled to enforce the payment of the arrears.

(14) A surcharge payable under this section is recoverable as a civil debt due to the judgment creditor by the judgment debtor. An action under this subsection may be brought in the District Court even though the amount to be recovered otherwise exceeds the limit of jurisdiction of the District Court.

(15) A judgment debtor who is aggrieved by an order to pay a surcharge may appeal to the Court of Appeal against that order under section 63 of the District Court Ordinance (Cap. 336)."