

(1920) 06 BOM CK 0023

Bombay High Court

Case No: None

Janardan Trimbak Gadre

APPELLANT

Vs

Martand Trimbak Gadre

RESPONDENT

Date of Decision: June 30, 1920

Citation: 59 Ind. Cas. 523

Hon'ble Judges: Norman Macleod, C.J; Fawcett, J

Bench: Division Bench

Judgement

Norman Macleod, C.J.

The plaintiff applied in darkhatt No. 138 of 1918 for a stay of execution proceeding for the execution of the decree in Suit No. 69 of 1915, pending the disposal of his Suit No. 110 of 1918 in which he prayed for a declaration that the decree in Suit No. 69 of 1915 was void and incapable of execution as against him.

2. The First Class Subordinate Judge of Poona made an order for stay of execution in darkhast No. 138 of 1918 pending the disposal of the plaintiff's suit, on the plaintiff's furnishing security to the extent of Rs. 11.000.

3. The question now arises whether that is an appealable order. It can only be appealable if it is an order u/s 47. In Section 47 no mention is made of an order for stay of execution. The words which appear at the end of Section 244(c) in the Code of 1882, "or to the stay of execution thereof" have been omitted. It is argued that the words are omitted because they are unnecessary, the question regarding the stay of extension being a question regarding the execution of a decree. Reference must be made to Section 2 in which "a decree" is defined. It is provided that "decree shall be deemed to include the rejection of a plaint and the determination of any (question within Section 47," It is therefore, intended that orders made u/s 47, as being in the nature of decrees, should be appealable as decrees. It is difficult to imagine that the Legislature thought that an order for the stay of execution would be considered in any way as in the nature of a decree and that, therefore, it should be deemed to be included within the term "decree". A question relating to the stay

of execution is within the discretion of the Court to which the application is made, and it is certainly not desirable to extend the number of appealable orders unless there is distinct authority for such an extension.

4. I note this is the view taken by Mr. Mulla in his commentary, while the opposite view is taken by Mr. Woodroffe.

5. The appeal, therefore, must be dismissed with costs.

Fawcett, J.

6. I concur. I would only add one further argument in favour of the view that no appeal lies. No doubt the words "questions relating to the execution of a decree" are very wide and prima facie cover a question regarding stay of execution of a decree. But in construing the words of Section 47 the Court is entitled to have regard to the fact that the corresponding Section of the old Code contains an express reference to a stay of execution, which has been omitted in the present section. I do not think that this omission is necessarily due to its being considered that the previous words of the section were wide enough to cover this particular question. I think it is very likely that it was considered that a suit would never be brought in regard to the mere question of a stay of execution and that it was, therefore, unnecessary to make the section cover such a question.