

(1907) 12 BOM CK 0015

Bombay High Court

Case No: None

Hookamchand Sarupchand

APPELLANT

Vs

Nowroji Sorabji Talati

RESPONDENT

Date of Decision: Dec. 17, 1907**Acts Referred:**

- Insolvent Debtors Act, 1848 - Section 49

Citation: (1908) 10 BOMLR 345**Hon'ble Judges:** Beaman, J**Bench:** Single Bench

Judgement

Beaman, J.

It appears to me that Section 49 of the Insolvent Debtors Act clearly provides for, and is intended to empower the Court to deal with, two classes of cases, (1) cases in which a decree has, and (2) cases in which a suit has been instituted but a decree has not, been passed. In the former case, the Court may stay the execution; in the latter case the Court may stay further proceedings in the suit. It is contended that while the Court always has exercised the power of staying execution of a decree, it never has exercised the power of staying further proceedings. No reason whatever is assigned for this alleged practice: a practice I may observe that renders entirely nugatory one half at least of the contemplated scope of the section. The word "may" being used, it was argued that in both classes of cases, the Court had a discretion, which while in the one it uniformly exercised, in the other it has uniformly renounced. I cannot bring myself to believe that this conforms with the intention of the legislature, or that any practice however old, well established and uniform, could or ought to override a legislative enactment. Where "may" is used in statutes in this and the like connections, the ordinary rule of interpretation, is that the requisite conditions being fulfilled the Court will and ought to exercise the power it may exercise. What discretion there is, is meant to be used in exceptional cases. Nor can I see any valid reason why a Court which may and ought to stay further proceedings

in a suit, should refuse to do so, should go on to pass a decree, and then stay the execution of the decree. But as this is apparently a new point, which took the learned gentlemen concerned by surprise, and the case is ex parte I will do no more now than state what I think to be the proper procedure, in case the like point should occur again. As the Practice certainly gives colour to the contention of plaintiff's counsel, I will in this suit make the ordinary ex parte decree for plaintiffs for Rs. 174682-7-3 with interest at 6 per cent per annum from 27-8-07 till this day. Costs and interest on judgment at the same rate till payment.