

Hookamchand Sarupchand Vs Nowroji Sorabji Talati

Court: Bombay High Court

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.