

to his delay in applying to the Courts for preventive relief against the caste Panchayat, which virtually amounts to acquiescence, I concur in thinking that the lower Court's refusal to grant an injunction should be upheld.

1920.

GURJASANKAR
DAJI
v.

MURLIDHAR
NARAYAN.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

JANARDAN TRIUMBAK GADRE (ORIGINAL DEFENDANT), APPELLANT v.
MARTAND TRIUMBAK GADRE (ORIGINAL PLAINTIFF), RESPONDENT^a.

1920.

June 30.

*Civil Procedure Code (Act V of 1908), section 47—Decree—Execution—
Order for stay of execution—Order not appealable.*

An order for stay of execution of a decree is not an appealable order.

FIRST appeal against the decision of G. M. Pandit, First Class Subordinate Judge of Poona in Suit No. 110 of 1918.

Proceedings in execution.

An award decree was passed between two brothers Janardan Triumbak and Martand Triumbak in Suit No. 69 of 1915 in the Court of the First Class Subordinate Judge at Poona. Janardan applied by Dar-khast No. 138 of 1918 for execution with regard to certain items relating to the decree passed in the above suit. Martand thereupon brought Suit No. 110 of 1918 against Janardan for a declaration that the decree in Suit No. 69 of 1915 was void and incapable of execution. He further prayed that under Order XXI, Rule 29 the

^a First Appeal No. 120 of 1919.

1920.

JANARDAN
TRUMBAK
v.
MARTAND
TRUMBAK.

execution of Darkhast No. 138 of 1918 be stayed pending the disposal of his Suit No. 110 of 1918. The First Class Subordinate Judge of Poona made an order staying execution of the decree in Suit No. 69 of 1915 on Martand's furnishing security to the extent of Rs. 11,000.

The defendant, Janardan, appealed to the High Court against the order.

A preliminary objection was raised that no appeal lay against the order for stay of execution.

P. V. Nijure, for the respondent :—The order is not a decree nor is it an order which is included amongst the appealable orders under Order XLIII of the Code of Civil Procedure, 1908 and hence no appeal lies.

H. G. Kulkarni, for the appellant :—The words “stay of execution” appearing in section 244 of the Code of 1882 are omitted from section 47 of the Code of 1908 ; but they were unnecessary as the greater includes the less and orders relating to stay of execution are orders relating to execution. The stay of execution is a matter which clearly comes within the words “all questions arising between the parties”. Also the word “decree” as defined in section 2 of the present Code includes any question within section 47 of the Code. It may not necessarily determine conclusively the rights of the parties with regard to all or any of the matter in controversy. An order granting stay of execution is, therefore, one which is contemplated by section 47. Such an order is covered by the definition of the word “decree” as given in section 2 of the Code.

MACLEOD, C. J. :—The plaintiff applied in Darkhast No. 138 of 1918 for a stay of execution proceedings 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.

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.

The question now arises whether that is an appealable order. It can only be appealable if it is an order under section 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 execution 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 under section 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. I note this is the view taken by Mr. Mulla in his Commentary while the opposite view is taken by Mr. Woodroffe.

1920.

JANARDAN
TRIUMBAK
v.
MARTAND
TRIUMBAK.

1920.

The appeal therefore must be dismissed with costs.

JANARDAN
TRUMBAK
v.
MARTAND
TRUMBAK.

FAWCETT, J.:—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.

Appeal dismissed.

J. G. R.
