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the application of the 25th May, 1883, which was within time; and the contention appears to be sound and sustainable. But apart from this consideration, it is clear that the application for the refund is not time-barred. The plaintiff-applicant is, in the sense of s. 583 of the Civil Procedure Code, "a party entitled to a benefit by way of restitution under the decree" of the appellate Court made on the 27th July, 1881. It was a necessary incident of that decree, which declared the plaintiff's deposit of Rs. 1,139-15-6 to be insufficient to purchase the property under pre-emption, that he was entitled in consequence to restitution of this sum, which he had paid as the sufficient price under the decree of the lower appellate Court, and the plaintiff was competent to move the local Court to execute the appellate decree in this respect in his favour "according to the rules prescribed for the execution of decrees in suits"—s. 583 *supra*. This he did in May, 1883, by an application made according to law in the proper Court in the sense of art. 179 of the Limitation Act. And his present application to the same effect made on the 19th February, 1885, being within three years of that application, is within time. The order of the Subordinate Judge therefore, directing execution to be made in the plaintiff's favour, must be restored, that of the District Judge being set aside, and this appeal is allowed with all costs.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

CHUHA MAL (PLAINTIFF) v. HARI RAM (DEFENDANT).*

1886
July 9.

Arbitration—Making award after the period allowed by Court—Order fixing time, or enlarging time fixed, for the delivery of award requisite—Civil Procedure Code, ss. 508, 514, 521, 522—Decree in accordance with award—Appeal—Objection to validity of award taken for the first time in appeal.

The law contained in ss. 508 and 514 of the Civil Procedure Code requires that there shall be an express order of the Court fixing the time for delivery of the award or for extending or enlarging such time; and the mere fact that the Court has passed a decree in accordance with the award cannot be taken as affording a presumption that an extension of time was given.

An award which is invalid under s. 521 of the Civil Procedure Code, because not made within the period allowed by the Court, is not an award upon which the Court can make a decree, and a decree passed in accordance with such an award

* First Appeal No. 78 of 1886, from an order of C. J. Daniell, Esq., District Judge of Farukhabad, dated the 24th March, 1886.

is not a decree in accordance with an award from which no appeal lies, with reference to the ruling of the Full Bench in *Lachman Das v. Brijpal* (1).

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Where objection to the validity of the award on the ground that it was made beyond the time allowed was not taken by the Defendant in the first Court, held that he was not thereby estopped from raising the objection for the first time in appeal, inasmuch as it was not shown that in the first Court he was aware of the defect, or had done anything to imply consent to extension of the time.

THE plaintiff in this case claimed possession of certain land. In the course of the suit in the Court of first instance the parties agreed to refer the case to the arbitration of one Amba Prasad. The Court of first instance (Munsif of Farukhabad) made an order referring the case to the arbitrator, and fixing the 10th July, 1885, for the delivery of the award. On the application of the arbitrator the time for the delivery of the award was extended to the 9th August, 1885, and then to the 24th September, 1885. The arbitrator delivered his award (which was in the plaintiff's favour, and awarded him possession of the land claimed and costs of the suit) on the 26th September, 1885, or two days beyond the time allowed. The defendant took certain objections to the award, but did not take the objection that the award was invalid as it had not been made within the time allowed by the Court. The Court of first instance disallowed the objections, and passed a decree in accordance with the award. The defendant appealed on the ground that the award was invalid, as it had not been delivered within the time allowed; and the lower appellate Court (District Judge of Farukhabad) allowed the appeal on this ground, and, setting aside the award, remanded the case to the Court of first instance for trial on the merits.

The plaintiff appealed from the order of remand, the 1st and 2nd grounds of appeal being (i) that the decree of the Court of first instance was not appealable, having been passed in accordance with the award; (ii) that the objection with reference to which the lower appellate Court had reversed that decree had not been taken in the Court of first instance, and was therefore not entertainable in the appellate Court.

Babu Ram Das Chakarvati, for the appellant.

Pandit Sundar Lal, for the respondent.

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OLDFIELD, J.—This is an appeal from the decree of the Judge setting aside the decree of the Court of first instance made on an award of arbitrators.

The matter in dispute had been referred to arbitration under s 506 and following sections, Civil Procedure Code, and a time fixed for submission of the award, which was extended: the award, however, was not submitted till two days after the expiry of the time allowed.

Objections were taken to the award by the defendant, which did not include any as to its invalidity by reason of its being submitted after the time allowed. The objections were disallowed, and the Court made a decree in accordance with the award.

The defendant appealed to the Judge on the ground that the award was invalid, and the Judge, allowing the plea, has set aside the decree. The plaintiff now appeals to this Court, and contends that under s. 522, Civil Procedure Code, no appeal lay to the Judge, and that the defendant is estopped from raising the objection, as he failed to raise it in the Court of first instance. S. 521 enacts that no award shall be valid unless made within the period allowed by the Court. The award in this case was not made within the period allowed by the Court, and consequently it must be held to be invalid, that is, there was no award on which the Court could make a decree. I think the law (ss. 508 and 514) requires that there shall be an express order of the Court fixing the time for delivery of the award, or for extending or enlarging such time; and the mere fact that the Court has passed a decree in accordance with the award, cannot be taken as affording a presumption that an extension of time was given; nor do I think that the defendant is estopped from raising this particular ground of objection because he did not raise it in the first Court; it is not shown that he was then aware of the defect, or had done anything to imply consent to extension of the time.

As the award was invalid, the decree of the first Court is not a decree in accordance with an award from which no appeal lies, with reference to the Full Bench ruling of this Court (1). I would dismiss the appeal with costs.

(1) L. L. R., 6 All. 174.

BRODHURST, J.—I entirely concur in dismissing the appeal with costs, and in the reasons given by my brother Oldfield for so doing.

Appeal dismissed.

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CIVIL REVISIONAL.

1886
 July 22.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

MAKTAB BEG AND OTHERS (DEFENDANTS) v. HASAN ALI (PLAINTIFF).*

Civil Procedure Code, s. 561—Objections by respondent—Withdrawal of appeal.

Where an appeal was dismissed upon the application of the appellant himself made before the hearing,—held that the respondents, who had filed objections to the decree of the Court of first instance under s. 561 of the Civil Procedure Code, had no claim to have their objections heard, notwithstanding the dismissal of the appeal. *Coomar Puresh Narain Roy v. Watson and Co. (1)* and *Dhondi Jagannath v. The Collector of Salt Revenue (2)* referred to.

The facts of this case are stated in the judgment of Oldfield, J.

Mr. *Niblett*, for the applicants (defendants).

Munshi *Kashi Prasad*, for the plaintiff.

OLDFIELD, J.—This is an application, under s. 622 of the Civil Procedure Code, to revise an order of the lower appellate Court passed in an appeal from a decree of the Munsif of Muhammadabad. The plaintiff brought a suit against the applicants before us for damages for breach of contract. The Munsif decreed a portion of the claim and dismissed the remainder. The plaintiff preferred an appeal, and the applicants before us, who were respondents, filed objections under s. 561 of the Code. Before the hearing began the plaintiff-appellant applied to withdraw his appeal, and it was dismissed, and the applicants' objections were at the same time dismissed, without the lower appellate Court going into them. It is this order of the Judge we are asked to revise. I am of opinion that the applicants had no claim, under the circumstances, to have their objections heard when the appeal itself was not heard. The terms of s. 561 are, that a respondent may, upon the hearing, support the decree on any grounds decided against him in the Court

* Application No 217 of 1885 for revision under s. 622 of the Civil Procedure Code of an order of J. M. C. Steinbelt, Esq, District Judge of Azamgarh, dated the 21st July, 1885.