

REVISIONAL CIVIL.

1896
December 16.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.

BASHIR-UD-DIN (AUCTION PURCHASER) v. JHORI SINGH
(JUDGMENT-DEBTOR).*

*Civil Procedure Code, section 310A--Execution of decrees--"Order"--
"Decree"--Appeal.*

No appeal will lie from an order passed under section 310A of the Code of Civil Procedure refusing to accept a deposit tendered under that section on the ground that it was too late.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu Satya Chander Mukerji, for the appellant.

Mr. H. C. Niblett, for the respondent.

EDGE, C.J. and BLAIR J.—This is an application under section 622 of the Code of Civil Procedure. The property of Jhori Singh, the respondent here, had been sold in execution of a decree. The last of the thirty days allowed to a judgment-debtor for making the deposit under section 310A of the Code of Civil Procedure in this case was a holiday on which the Court was closed. The thirty-first day was also a holiday on which the Court was closed. Upon the thirty-second day Jhori Singh applied to make the deposit under section 310A. The amount which he proposed to deposit was sufficient to bring him in that respect within the section. The Munsif held that the deposit could not be made, as it had not been made within thirty days of the sale. In so holding the Munsif was wrong. It is true that the Limitation Act (Act No. XV of 1877) did not apply, but clauses 1 and 2 of section 7 of Act No. 1 of 1887 (The General Clauses Act, 1887) applied. The deposit accordingly was tendered within time and should have been received. Jhori Singh appealed from the order of the Munsif to the Court of the District Judge. Before the District Judge the question whether or not an appeal lay does not appear to have been raised. The District Judge in appeal set aside the

* Civil Revision No. 36 of 1896, from an order of H. E. Holme, Esq., District Judge of Shshjahanpur, dated the 8th June 1896.

order of the Munsif, and made an order allowing the deposit and setting aside the sale. It is from that order of the District Judge that this application in revision is made.

No appeal lay under section 588 of the Code of Civil Procedure from an order under section 310A of that Code. The case did not come within section 244 of the Code. It was simply a question between the judgment-debtor and the purchaser at auction sale. It was immaterial to the decree-holder whether he received his money from a deposit made by the judgment-debtor or from the price paid by the purchaser at the auction sale. It has been held by this Court that a purchaser at an auction sale is not a representative within the meaning of section 244 of a party to the suit, in execution of the decree in which the sale has taken place. Consequently the case did not come under section 244, and the order of the Munsif could not be treated as a decree which was appealable. The District Judge in hearing and determining the appeal before him exercised a jurisdiction not vested in him by law, as no appeal lay to his Court from the order in question. Under section 622 of the Code of Civil Procedure we make an order setting aside the order of the District Judge in appeal and restoring the order of the Munsif which he had set aside. We regret to be obliged to take this course, as the Munsif was clearly wrong in the order which he made. We make no order as to costs. We may mention that the same question as to jurisdiction was decided by this Court in the unreported case Revision No. 3 of 1896, decided on the 11th of March 1896.

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Appeal dismissed.