

**Bashesar Dayal Vs. Hargobind**

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**SooperKanoon Citation :** [sooperkanoon.com/463550](http://sooperkanoon.com/463550)

**Court :** Allahabad

**Decided On :** Feb-14-1912

**Reported in :** 14Ind.Cas.52

**Judge :** Karamat Husain and ;Tudball, JJ.

**Appellant :** Bashesar Dayal

**Respondent :** Hargobind

**Judgement :**

1. In execution of a decree, certain mortgage-bonds belonging to the judgment debtor were sold. He, under Order XXI, Rule 89, applied to have the sale set aside. But he failed to deposit the money within the 30 days prescribed by law. The application was resisted on two grounds: (1) that it was barred by limitation and (2) that there could be no such application when the property sold was moveable. The, first Court came to (he conclusion that the money was deposited beyond time and dismissed the application. The order of dismissal was upheld on appeal by the lower Appellate Court. A second appeal from the order of the lower Appellate Court was preferred to this Court. At the hearing of the appeal, a preliminary objection was taken that the order of the lower Appellate Court in such a case was final and that there was no second appeal. This preliminary objection is perfectly sound and must prevail, vide Second Appeal No. 874 of 1911, decided on the 3rd of February 1912. The learned Counsel for the appellant asks us to treat the second appeal as an application for revision, and he argues with our

permission that the lower Court in holding that the application was beyond time acted illegally. We are unable to accede to this contention. A wrong decision upon a question of limitation does not fall within the ambit of acted in the exercise of its jurisdiction illegally' and cannot be a ground for interference in revision, see Sundar Singh v. Doru Shankar 20 A. 78 and Muhammad Baqar Khan v. Nando Tiwari A.W.N. (1898) 74. This application, therefore, must fail both as a second appeal and as an application for revision. We dismiss it with costs, which in this Court will include fees on the higher scale.

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