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**(1924) 06 BOM CK 0012**  
**In the Bombay High Court**  
**Case No : First Appeal No. 211 of 1922**

Motilal Parsharam

APPELLANT

Vs

Fulchand Balaram

RESPONDENT

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**Date of Decision :** 10-06-1924

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72

**Citation :** AIR 1924 Bom 515 : (1924) 26 BOMLR 770 : 83 Ind. Cas. 379

**Hon'ble Judges :** Lallubhai Shah, J;Fawcett, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Lallubhai Shah, Actg., C.J.—The appellant in this case, who was the decree-holder, applied for execution of the decree by sale of a certain ginning factory. In execution the date for putting it up for sale was fixed, and on that date the bid did not go beyond Rs. 5,000. It appears, however, that the property was valued by a Panch at Rs. 40,000. Shortly after this first bid the judgment-debtor made an application to the Court stating that the property was worth Rs. 60,000. On June 12 the decree-holder made an application, which in substance was an application for leave to bid. He stated in the application that, he was prepared to buy the property for Rs. 20,000. The learned Judge, however, ordered that if the plaintiff was prepared to pay the amount fixed by the Panch his offer would be accepted. The decree-holder did not raise his bid to that amount, and ultimately on June 20 the learned Judge passed the following order:--

Nobody makes any bid in the auction sale of the Immovable property belonging to the defendant. Therefore the warrant of sale was returned. Therefore (it is ordered that) the defendant should bear the costs Rs. 111-8-6 and hence the Darkhast is disposed of.

2. It is clear that the Darkhast should not have been treated as disposed of, because everything that was to be done under the Darkhast still remained to be

done A further attempt for the sale of the property should have been made. There is apparently no reason on the record why the decree-holder should not have been granted leave to bid under rule 72 of Order XXI. We set aside the order disposing of the Darkhast, and send back the Darkhast to be dealt with according to law. It will be the duty of the Court to bring this property to sale, though in doing so, all reasonable care may be taken to see that the property is not sold at an undervalue, If it fetches a good price according to the expectations formed on the valuation by any private party, it will be to the advantage of the parties; but if such a price is not realized, there is no reason why the sale should be indefinitely put off. The result is that the appeal is allowed, the order disposing of the Darkhast set aside, and the Darkhast sent back to the lower Court for disposal according to law in the light of our judgments. The appellant to have the costs of this appeal. Costs in the lower Court to be costs in the Darkhast.

Fawcett, J.

3. I concur in the above order. The valuation by the Panchas was no doubt a matter which has to be taken into consideration. But I can see no sufficient ground for the Subordinate Judge treating it as conclusive of the real value of the property, especially having regard to the fact that when it was put up on the spot Rs. 5,000 was the highest bid as against Rs. 40,000, the valuation of the Panchas. Prima facie the offer of the judgment-creditor to bid up to Rs. 20,000 seems to be a bona fide one; and I do not think there was any good ground for refusing to allow him to bid, unless he was prepared to go up to Rs. 40,000. Technically the Subordinate Judge had no right to reject the Darkhast in the way he did. His only power was to adjourn the sale from time to time in order to try and get a proper price.