

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No.13672 of 2012

M/S Al-Razi Properties Development Private
Ltd.

...Petitioner

-Versus-

National Credit and Commerce Bank Ltd. and
others

...Respondents

Mr. Ashoke Kumar Banik, Advocate

... for the petitioner

Mr. Khan Mohammad Shameem Aziz with Ms.
Fahima Hossain, Advocates

... for the respondents

Judgment on 02.05.2013

Md. Ruhul Quddus,J:

This *rule nisi* at the instance of a borrower-company was issued for a direction upon the respondent National Credit and Commerce Bank Ltd. to accept the entire amount of loan as claimed by the bank from the borrower-company in twelve equal installments starting from November, 2012.

Facts leading to issuance of the Rule, in brief, are that the petitioner M/S Al-Razi Properties Development Private Ltd. a real estate company borrowed loan of Taka 60,00,000/- (sixty lac) only from National Credit and Commerce Bank Ltd. Jubilee Road Branch,

Chittagong. The loan was secured by mortgage of some land property belonged to the company, which paid a few installments and was running the business in due course. All on a sudden an auction notice for holding auction of the mortgaged property was published in the Daily Prothom Alo dated 03.10.2012 (annex-D), in which event the borrower-company moved in this Court and obtained the Rule with an interim order of stay.

Mr. Ashok Kumar Banik, learned Advocate appearing for the petitioner submits that without fixing the liability of the borrower, the bank cannot publish an auction notice under section 12 of the Artha Rin Adalat Ain, 2003 (hereinafter called the Ain). He further submits that the borrower-company did not delegate any authority in favour of the creditor-bank to sell the mortgaged property and therefore, the impugned auction notice published under section 12 of the Ain is absolutely illegal and without lawful authority.

Mr. Khan Mohammad Shameem Aziz, learned Advocate for the respondent-bank on the other hand, submits that the point of prior adjudication of liability of a borrower before publishing any auction notice under section 12 of the Ain and its constitutional validity having been decided in so many cases, the submission of the learned Advocate for the petitioner is not tenable. In this regard, he refers to the case of Overseas Garments Industries (Pvt.) Ltd. Vs. Bangladesh and others, 57 DLR 168. He further submits the writ petition does not lie against a private banking company inasmuch as it does not fall within

the definition of person as contemplated in article 102 of the Constitution.

We have considered the submissions of the learned Advocates and gone through the records as well as the decision cited. It appears that the date for holding auction of the mortgaged property was fixed on 23.10.2012, which expired long before. It further appears that at the time of issuance of the Rule the petitioner. company was directed to file an affidavit-in-compliance showing payment of the loan by twelve equal installments starting from November, 2012. It was also pointed out that in case of failing to do so the Rule would stand discharged. Record shows that no affidavit-in-compliance has been filed. Learned Advocate for the petitioner also fails to show that the petitioner has been paying the installments regularly.

For both the reasons the Rule has lost its force to proceed and no cause for prosecuting the writ petition exists.

Accordingly, the Rule is discharged.

Mohammad Bazlur Rahman, J:

I agree.