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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 312/2019 & CRL M.A. 2200/2019 and CRL**
M.A. 620/2020

YASHNA MEHTA & ANR Petitioners

Through Petitioner in person.

versus

STATE & ORS Respondents

Through Mr. Rajeev Mehra, Sr. Adv.
with Mr. Kunal Tandon, Mr.
Chetan Roy and Ms. Niti A.
Sachar, Advocates

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

% **17.01.2020**

CRL M.A.620/2020

This is an application filed under Section 482 Cr.P.C. by the respondent no. 2 HDFC Bank Ltd. for early hearing.

It is submitted by ld. Counsel for the respondent no. 2 that vide order dated 13.03.2019, Ld. Division Bench has passed the following order:

“On the applicant/petitioner raising an objection with regard to the maintainability of the writ petition, we expect that writ court to consider the same as expeditiously as possible before proceedings in the matter in accordance with law.

In view of the aforesaid, we dispose of the matter”

It is further submitted that the matter came up before this court on 20.03.2019 when the pleadings were ordered to be completed and

the matter was listed on 29.07.2019 for arguments. On 29.07.2019, some arguments took place and the matter was adjourned to 31.10.2019 for arguments to be heard at 3 pm and thereafter on 20.12.2019, listed at the end of the board. On 20.12.2019, the matter was not taken up and the matter was listed for 13.03.2020. It is further submitted that the writ petition arises out of proceeding filed by the respondent under Section 14 of the Securitization and Reconstruction of financial assets and Enforcement of Security Interest Act, 2003, whereby no lis is decided between the parties, and the Chief Judicial Magistrate simply orders the police authorities to provide assistance to the Bank/FIs for taking possession of the mortgaged properties/secured assets. It is settled position of law that the mortgagee or the borrower has no right whatsoever to be heard before the Ld. CMM exercising its jurisdiction under Section 14 of the said Act. In the event that the mortgagee or the borrower or for that matter, any party aggrieved by any of the measures resorted to by recourse to the provisions of the SARFAESI Act, 2002 feels aggrieved by the action/measures of the Bank, by way of an appropriate Application, must be exercised. A statutory period of 45 days is provided to any aggrieved party to approach the concerned DRT with an application under Section 17 of the said Act. It is further submitted that in the case in hand, the first application under Section 14 of the said Act was filed on 18.05.2010 and vide order dated 04.08.2010, the then ACMM (Special Acts) appointed a receiver to take possession of the mortgaged property. Since this order was for a limited period of 3 months, an application for extension of time was

filed on 02.02.2011. This application eventually came to be decided vide Order dated 06.09.2018, which was after a period of more than 8 years from the first application under Section 14 of the said Act, and more than 7 years from the date of second application under Section 14 of the said Act. However, despite all the orders, the Respondent Bank is unable to take possession of the mortgaged property in question.

It is further submitted that respondent/ applicant has also filed a reply to the Writ, whereby the facts and list of dates are provided, which show that the matter has been delayed and the said delay is causing loss to the Bank. Considering that there has been an extreme delay in adjudication of the matters, it is imperative that the matter is taken up on an earlier date. Further keeping in mind the order passed in the LPA by the Ld. Division Bench, the matter be heard immediately and be disposed off in accordance with law and more importantly the issue relating to the very maintainability of the petition itself which ought to be decided in the first instance. As stated, while a criminal writ petition would not be maintainable, the statutory remedy under the provisions of the SARFAESI Act, cannot be permitted to be given a go by or circumvented.

Petitioner has opposed the application on the ground that there is no urgency in the matter. The application moved by the applicant is not proper and from perusal of the affidavit annexed to the application, it cannot not be made out as to who has identified the deponent. It is further submitted that no urgency was earlier shown in the matter. It is, therefore, prayed that the present application be

dismissed.

I have considered the rival submissions. Division Bench of this Court in LPA No. 170/2019 vide order dated 13.03.2019 has observed as follows;

“On the appellant/ petitioner raising an objection with regard to the maintainability of the writ petition, we expect the writ court to consider the same as expeditiously as possible before proceeding in the matter in accordance with law.
In view of the aforesaid, we dispose of the matter”

In view of the above order of Division Bench in LPA No. 170/2019 and in view of the reasons given in the application, the application moved under Section 482 Cr.P.C. for early hearing is allowed in the interest of justice.

The date is now preponed to 13.02.2020. Earlier date i.e. 13.03.2020 stands cancelled. Application is accordingly disposed of.

List the matter on 13.02.2020.

BRIJESH SETHI, J

JANUARY 17, 2020

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