IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1211 OF 2026

Hill Top Estate … Petitioners

Vs.

Union of India through its Secretary and others … Respondents

WITH

WRIT PETITION NO.1457 OF 2026

HDFC Bank Limited … Petitioners

Vs.

Union of India through Ministry of Finance and ors. … Respondents

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Mr. Kevic Setalvad, Senior Advocate a/w. Mr. Sidharth Samantaray, Mr. Abdullah Qureshi and Ms. Nalvika Sachiv i/b. India Law LLP for Petitioner in WP/1457/2026 and for Respondent No.2 in WP/1211/2026.

Mr. Zal Andhyarujina, Senior Advocate a/w. Mr. Shrey Sancheti, Mr. Carl Patel and Ms. Sanaea Umrikar i/b. Mr. Carl Patel for Petitioner in WP/1211/2026 and for Respondent No.4 in WP/1457/2026.

Mr. Mohamedali M. Chunawala with Mr. Ashutosh Mishra for Respondent No.1-UOI in both the Petitions.

Mr. Anirudh Hariani a/w. Mr. Rohit Agarwal, Ms. Kruti Bhavsar, Mr. Pratik Barot and Ms. Angel Pandey for Respondent Nos.2 and 3 in WP/1457/2026 and for Respondents Nos.3 and 4 in WP/1211/2026.

Mr. Amir Arsiwala a/w. Ms. Vaishnavi Dhure for Respondent No.5 in both the Petitions.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

Reserved on : MARCH 11, 2026

Pronounced on : MARCH 24, 2026

<u>JUDGEMENT</u> : (*Per Justice Manish Pitale*)

. A bank and an auction purchaser are before this Court in these two writ petitions to challenge an order passed by the Debt Recovery Tribunal-III, Mumbai (DRT), whereby an auction conducted by the petitioner bank, wherein the auction purchaser was successful in its bid, has been set aside and the petitioner bank has been directed to take steps

afresh. The order was passed in an interim application filed by the respondent guarantors in their pending securitisation application. The petitioners have directly filed these writ petitions without resorting to the remedy of filing appeals before the Debt Recovery Appellate Tribunal (DRAT), claiming that the impugned order passed by the DRT is without jurisdiction as it is in the teeth of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securtisation Act') and judgements of the Supreme Court. It is further claimed that the DRT has granted relief beyond the prayers made in the interim application and also in the final prayers made in the securitisation application by the respondent guarantors. It is also claimed that by the impugned order, the DRT has virtually granted final relief at interim stage and that too in the teeth of the settled position of law. Before considering the rival submissions, it would be appropriate to first refer to the chronology of events leading upto filing of these two writ petitions. The respondent Ritu Automobiles Private Limited, presently in liquidation, is the borrower while respondents Manoj Lalwani and Ritika Lalwani are the guarantors. They are being referred to hereinafter as the borrower and the guarantors respectively.

2. The borrower availed loan facilities from the petitioner HDFC Bank Limited and for that purpose created equitable mortgage on the subject property. The property is located in Survey No.125 in Village Gove, Taluka Bhiwandi, District Thane, Maharashtra. On 21.10.2019, the petitioner bank classified the aforesaid loan account of the borrower as a non-performing asset (NPA) and in that context, issued recall notice to the borrower on 05.11.2019. In response thereto, the borrower claimed that it would clear the dues along with interest by selling the subject property and that a buyer had been identified. Since no further steps were taken by the borrower, on 16.01.2020, the petitioner bank issued notice under Section 13(2) of the Securitisation Act and recorded

that there was a mortgage created over the subject property. As required by law, the borrower as well as the guarantors were served with the aforesaid notice. Since no steps were taken by the borrower and the guarantors and they did not raise any objection to the said notice, on 10.09.2020, the petitioner bank issued symbolic possession notice in respect of the subject property. The said notice was also published in two newspapers and thereafter the petitioner bank issued a demand notice to the respondent borrower with respect to a specific amount along with interest. A valuation report was obtained on 01.10.2021 and in this backdrop, in March 2022, the petitioner bank filed a petition before the National Company Law Tribunal (NCLT) for initiating insolvency resolution process in the context of the respondent borrower. The NCLT admitted the said petition and eventually on 10.10.2024, the NCLT passed an order admitting the respondent borrower into liquidation. Meanwhile, Axis Bank Limited filed a petition under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the respondent guarantors, which was also admitted and the personal insolvency resolution process commenced against them also. On 07.11.2024, the petitioner bank filed Form D - Proof of Claim with the liquidator of the respondent borrower for opting to realize the value of the subject property outside the liquidation process.

3. On 21.11.2024, a possession notice was issued recording that the petitioner bank had taken physical possession of the subject property from the liquidator of the respondent borrower and the same was published in two newspapers. The borrower did not raise any objection despite such notice additionally being served upon it. On 27.03.2025, a redemption notice under Rule 8(6) of the Securitisation Rules was issued to the liquidator of the respondent borrower and the resolution professional appointed for the respondent guarantors. It is in this backdrop that on 16.05.2025 an e-auction notice was served on the

liquidator of respondent borrower and also the resolution professional for respondent guarantors, informing them that the subject property would be auctioned on 21.06.2025 at the reserve price fixed at Rs.26.10 crores. At this stage on 18.06.2025, the respondent guarantors filed Securitisation Application No.300 of 2025 before the DRT. They sought the relief of quashing and setting aside of the aforementioned sale notice dated 16.05.2025, whereby the e-auction was scheduled for 21.06.2025, also praying for quashing and setting aside of the notice under Section 13(2) of the Securitisation Act. They further sought ancillary reliefs in the said securitisation application. Along with the securitisation application, the respondent guarantors filed Interim Application No.1910 of 2025 praying for interim reliefs. These included stay to the effect of the sale notice dated 16.05.2025 for auction of the subject property, injuncting the petitioner bank from alienating the subject property and restraining the acceptance of bid amounts.

4. On 21.06.2025, the e-auction was conducted in which the auction purchaser i.e. petitioner Hill Top Estate was declared as the successful bidder. On the same date, the petitioner auction purchaser deposited 25% of the bid amount i.e. Rs.6.61 crores and the sale was confirmed by the petitioner bank. On 25.06.2025, the securitisation application along with the interim application came up for consideration before the DRT but no effective orders were passed. Thereafter, on 02.07.2025, when the applications came up for consideration before the DRT, an order of *status quo* was passed. On 17.07.2025, the DRT modified its order and permitted the petitioner bank to receive the balance payment, but stay on issuance of the sale certificate continued. On 28.07.2025, the petitioner auction purchaser filed an interim application in the pending securitisation application seeking intervention and other reliefs. Since the DRT only permitted the petitioner auction purchaser to intervene and the interim stay on issuance of sale certificate continued, the petitioner

auction purchaser filed two writ petitions before this Court. In Writ Petition (L) No.29997 of 2025, the petitioner auction purchaser sought a direction to the petitioner bank to issue sale certificate and proceed for registration thereof so that handing over of the subject property would be facilitated. A further direction was sought for extension of time to the petitioner auction purchaser to deposit the balance 75% of the amount. In Writ Petition (L) No.12209 of 2025, the petitioner auction purchaser sought for a specific direction from this Court for disposing of its pending interim application by the DRT in a time-bound manner and also reiterated the aforesaid prayer for extension of time to deposit the balance 75% amount. On 19.09.2025, this Court disposed of both the writ petitions by directing the petitioner auction purchaser to deposit the balance amount in a no-lien account with the petitioner bank on or before 28.09.2025 and further directed the DRT to dispose of the pending interim applications in the securitisation application on or before 25.09.2025. It is undisputed that on 21.09.2025, the petitioner auction purchaser deposited the entire balance amount with the petitioner bank as directed by this Court.

5. The proceedings before the DRT were adjourned from time to time. In the meanwhile on 24.12.2025, the liquidator of the respondent borrower filed affidavit / statement before the DRT in the pending proceedings, stating that he was giving approval to the sale of the secured asset at the reserve price, in compliance with Rule 9(2) of the Securitisation Rules. In this backdrop, the DRT heard all the parties and passed the impugned order on 09.01.2026.

6. As noted hereinabove, the DRT by the impugned order dated 09.01.2026 set aside the auction sale conducted on 21.06.2025. The DRT further directed that the amount deposited by the petitioner auction purchaser shall be returned to it within one month from the date of the

order, failing which, interest @ 9% p.a. would run till the amount was received by the petitioner auction purchaser. The respondent guarantors, who were the applicants before the DRT, were directed to deposit a sum of Rs.26.10 crores i.e. the bid amount with the petitioner bank on or before 31.03.2026. Aggrieved by the said impugned order, the petitioner bank as well as the petitioner auction purchaser filed these two writ petitions before this Court. The petitioners and all the respondents represented through counsel were heard.

7. Mr. Kevic Setalwad, learned senior counsel appearing for petitioner bank submitted that the respondent guarantors in the first place have no locus to file and maintain the securitisation application before the DRT. It was submitted that the secured asset is registered in the name of the respondent borrower, which is a corporate debtor and it is undergoing liquidation. The liquidator has given his consent for sale of the property by auction and therefore, the petitioner bank exercised its right under Section 52 of the IBC to enforce the security interest outside the process of liquidation. In such a situation, the guarantors clearly have no right to maintain the securitisation application itself before the DRT. It was further highlighted that the respondent guarantors themselves are undergoing the process of personal insolvency under the provisions of the IBC and they have no net worth at all to approach the DRT and object to the aforesaid auction sale of the secured asset. By inviting attention to the prayers in the securitisation application as well as the interim application filed by the respondent guarantors, it was submitted that the prayers had become infructuous, since the auction sale had already been conducted and that in any case, there were no substantive prayers on the basis of which relief could have been granted in the manner in which it has been granted in the impugned order passed by the DRT.

8. On the objection of maintainability raised on behalf of the respondent guarantors, it was submitted that in the present case, the DRT had acted completely without jurisdiction, firstly because it passed the impugned order in the teeth of the position of law laid down by the Supreme Court and secondly, the impugned order had the effect of granting final relief at interim stage, which is also a jurisdictional error. On this basis, it was submitted that when a question of law was being raised in this writ petition concerning jurisdiction of DRT, which goes to the very root of the matter, it is not necessary for the petitioner bank to be relegated to the alternative remedy. In this context, reliance was placed on judgements of the Supreme Court in the cases of *Union of India and another Vs. State of Haryana and another*, **(2000) 10 SCC 482** and *Godrej Sara Lee Limited Vs. Excise and Taxation Officer-cum-Assessing Authority and others*, **2023 SCC OnLine SC 95** as also judgement of Division Bench of this Court in the case of *HDFC Bank Limited and others Vs. State of Maharashtra and others* [judgement and order dated **18.09.2024** passed in **Writ Petition (L) No.23881 of 2024**].

9. It was submitted that the impugned order virtually permitted redemption of mortgage and that too at the behest of the respondent guarantors in the face of the fact that the liquidator representing the original borrower had consented to the auction sale. It was submitted that this was in the teeth of Section 13(8) of the Securitisation Act, which specifies that the right to redeem the mortgage stands extinguished on the date of publication of the auction notice. In the present case, the auction notice was issued on 16.05.2025 and on this date, the right to redeem the mortgage stood extinguished. It was submitted that the DRT completely ignored the law laid down by the Supreme Court in this context in the cases of *Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others*, **(2024) 2 SCC 1** and *M. Rajendran and others vs. KPK Oils and Proteins India Private Limited*

and others, **2025 SCC OnLine SC 2036**. It was submitted that since the impugned order is in the teeth of the aforesaid statutory provision as also the law clarified by the Supreme Court in that context, the impugned order suffers from a jurisdictional error demonstrating that the writ petition filed by the petitioner bank is maintainable.

10. It was further submitted that the findings rendered by the DRT in the impugned order, to the effect that the notice under Section 13(2) was defective and that the valuation report was also defective, suffer from serious errors. By referring to the mortgage deed on record, it was submitted that the land as well as structures thereon were mortgaged and that, the DRT committed an error in holding that reference to structures in the notice issued under Section 13(2) of the Securitisation Act rendered the said notice defective. It was further submitted that the defects found in the valuation report also suffered from the same error. The DRT failed to appreciate that the valuation report, relied upon by the petitioner bank correctly took into consideration the fact that a portion of the subject land was utilised for construction of road and therefore, the valuation was determined after deducting the said portion of land from the larger piece of subject land. It was submitted that in any case, all these issues could certainly not be raised by the respondent guarantors and that they had absolutely no locus in the matter, considering the fact that the liquidator representing the original borrower had already given consent to the auction sale of the subject property. It was submitted that therefore, the consequential steps in pursuance of the auction sale ought to be permitted so that the auction purchaser, who has paid the entire amount, is able to enjoy the fruits of the auction.

11. Mr. Zal Andhyarujina, learned senior counsel appearing for the petitioner auction purchaser, supported the contentions raised on behalf of the petitioner bank. It was reiterated that in the facts of the present

case, the respondent guarantors could not have maintained the securitisation application as also the interim application filed therein. The respondent borrower through the liquidator had consented to the auction sale of the secured asset and therefore, the guarantors could not be heard, particularly after the auction sale notice dated 16.05.2025 had been already issued and published on behalf of the petitioner bank. It was emphasized that the DRT had virtually granted redemption of the mortgage and that too, at the behest of the respondent guarantors while the original borrower i.e. the respondent herein had through the liquidator raised no objection to the auction sale of the subject secured asset. It was submitted that the DRT committed a fundamental procedural irregularity by granting sweeping relief in the impugned order, when such relief was neither claimed in the securitisation application nor in the interim application, which was disposed of by the impugned order. On this basis, it was submitted that the respondent guarantors could not claim that the petitioner auction purchaser had not suffered from any prejudice or that principles of natural justice had not been violated, simply for the reason that the argument of procedural irregularity was being specifically raised on behalf of the petitioner auction purchaser in its writ petition.

12. By placing reliance on judgements of the Supreme Court in the cases of **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)* and **M. Rajendran and others vs. KPK Oils and Proteins India Private Limited and others** *(supra)*, it was submitted that the impugned order was in the teeth of the said position of law clarified by the Supreme Court of India. On this basis, it was submitted that the order itself was rendered without jurisdiction and hence the petitioner auction purchaser was entitled to maintain the writ petition before this Court. On this basis, it was submitted that the petitioner auction purchaser cannot be relegated to the alternative remedy of

approaching the DRAT, in the facts and circumstances of the present case. It was further submitted that jurisdictional error on the part of the DRT was further manifested by the fact that the impugned order virtually grants final relief at interim stage and that too, when no such reliefs were claimed either in the main securitisation application or in the interim application, which stood disposed of by the impugned order. On this aspect, reliance was placed on judgements of the Supreme Court in the cases of *Vishnu Babu Tambe Vs. Apurva Vishnu Tambe*, **(2017) 2 SCC 454** and *Samir Narain Bhojwani Vs. Aurora Properties and Investments and another*, **(2018) 17 SCC 203**.

13. The learned senior counsel appearing for the petitioner auction purchaser specifically placed reliance on judgement of the Supreme Court in the case of *East India Commercial Company Limited, Calcutta and another Vs. Collector of Customs, Calcutta*, **AIR 1962 SC 1893**, to contend that since the impugned order is in the teeth of the position of law laid down by the Supreme Court, it is rendered without jurisdiction and therefore, this Court ought to entertain the writ petition filed by the petitioner auction purchaser.

14. It was further submitted that the mortgage deed, when appreciated in the correct perspective, clearly demonstrated that the land with structures was mortgaged. The valuation report was prepared on that basis and in any case, the objections regarding the alleged defects in the valuation report and the alleged defects in the notice issued under Section 13(2) of the Securitisation Act by the Bank, could not have been entertained by the DRT at the behest of the respondent guarantors, particularly when the respondent original borrower never raised any objection to the same. The liquidator of the respondent borrower had specifically approached the DRT and consented by filing an affidavit on record. In such circumstances, there was no question of entertaining the

contentions raised on behalf of the respondent guarantors on merits and granting relief well beyond the prayers made in the securitisation application as well as in the interim application. It was further submitted that the petitioner auction purchaser has parted with huge amount of money and the entire amount as per the bid has been deposited with the petitioner bank. In such a situation, the petitioner auction purchaser ought not to be deprived of the fruits of the auction. On this basis, it was submitted that the writ petition ought to be allowed.

15. On the other hand, Mr. Hariani, learned counsel appearing for the contesting respondent guarantors submitted that the petitions filed by the bank and the auction purchaser are not maintainable in the face of the availability of the alternative efficacious remedy of approaching the DRAT. It was submitted that the petitioners ought to have exhausted the said remedy before approaching the writ court. It was submitted that the petitioners have not made out any special case for directly entertaining the writ petitions, without recourse to the alternative efficacious remedy. In this regard, reliance was placed on judgement of the Supreme Court in the case of *United Bank of India Vs. Satyawati Tandon and others*, **(2010) 8 SCCC 110**, wherein the Supreme Court reiterated that the statutory remedies available under the Securitisation Act must be taken recourse to and that the Writ Court ought not to casually entertain such writ petitions. It was further emphasized that even in the judgement upon which the petitioners have placed reliance i.e. **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)*, the Supreme Court once again reiterated that writ petitions ought not to be entertained casually and that the High Courts ought to follow the repeated directions issued by the Supreme Court, including in the case of **United Bank of India Vs. Satyawati Tandon and others** *(supra)* that when there is a statutory dispensation available, writ petitions directly filed to challenge the orders of the original authority ought not to be

entertained. It was submitted that there was no question of violation of principles of natural justice in the present case as both the petitioners were exhaustively heard by the DRT and their contentions were considered before passing the impugned order. It was submitted that therefore, the petitioners cannot claim this to be a special case for entertaining the writ petitions directly. Reliance was placed on judgement of the Supreme Court in the case of *State of Uttar Pradesh Vs. Sudhir Kumar Singh*, **(2021) 19 SCC 706**. It was submitted that in any case, proceedings before the DRT are summary proceedings and that they cannot be compared with the proceedings before civil court that are governed by the Code of Civil Procedure, 1908 (CPC). By referring to the prayer clauses in the securitisation application as well as the interim application, it was submitted that the prayers were sufficiently widely worded to cover the reliefs that were eventually granted in the impugned order passed by the DRT. On this basis, it was submitted that there was no question of any procedural irregularity committed by the DRT in the present case.

16. It was further submitted that the contention raised on behalf of the petitioners challenging the locus of respondent guarantors in filing the applications before the DRT, is absolutely without any substance. By referring to Section 17(1) of the Securitisation Act, it was emphasized that any person aggrieved by measures taken under the Securitisation Act can approach the DRT for relief. In the present case, the respondent guarantors are clearly covered under the expression 'any person aggrieved'. On this basis, it was submitted that the elaborate submissions made on behalf of the petitioners with regard to the locus of the respondent guarantors do not deserve any consideration.

17. On the aspect that the DRT in the impugned order had virtually allowed redemption of a mortgage in the face of the law laid down by

the Supreme Court in the case of **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)* and **M. Rajendran and others vs. KPK Oils and Proteins India Private Limited and others** *(supra)*, it was submitted that the petitioners as the guarantors were not seeking redemption of the mortgage, nonetheless, they were clearly entitled to challenge the actions undertaken by the respondent bank under the provisions of the Securitisation Act. It was this challenge that the DRT found to be meritorious and therefore, it passed the impugned order. The condition imposed in the impugned order that the respondent guarantors shall deposit amount of Rs.26.01 crores before 31.03.2026 is only with a view to ensure that if the respondent guarantors seek a stay on the fresh auction proceedings that may be undertaken, they have to show their *bona fide*. On this basis it was submitted that there was no question of redemption of mortgage at the behest of the petitioners in the impugned order that was passed by the DRT. Reliance was placed on judgments of the Madras High Court in the cases of *N. R. Sadasivam Vs. Indian Bank*, **2013 (1) CTC 53** and *Star Trace Engineering Division Vs. Registrar, DRT and others*, **(2023) SCC OnLine Mad. 8349**, to contend that if an auction sale is set aside by the tribunal or a court of law on material irregularities, the right of redeem would automatically revive.

18. It was submitted that since the DRT found that the respondent auction purchasers had made out a strong case on merits, demonstrating that the initial action undertaken by the petitioner bank itself was in the teeth of law, all consequential actions and the superstructure itself collapsed. On this basis, it was submitted that the petitioners cannot claim that the DRT permitted redemption of mortgage in the teeth of the law laid by the Supreme Court.

19. On the merits of the matter, the learned counsel appearing for the respondent guarantors defended the findings rendered by the DRT. It

was submitted that glaring defects were found both in the notice issued under Section 13(2) of the Securitisation Act as well as the valuation report, which went to the very root of the matter. It was submitted that all the grounds taken in the securitisation application were reiterated in the interim application and the glaring defects were demonstrated on behalf of the respondent mortgagors before the DRT. It was emphasized that the notice under Section 13(2) of the Securitisation Act was clearly defective inasmuch as it described the mortgaged property in variance to the description of the mortgaged property in the mortgage deed itself and further that the amount stated in the said notice did not give proper bifurcation of the principal amount and the interest and other such details. By placing reliance on judgement of this Court in the case of *Saraswat Co-op. Bank Limited Vs. National Flank Industries Limited and others*, **2025 SCC OnLine Bom. 3332**, it was submitted that failure to give such details in the notice under Section 13(2) of the Securitisation Act, which were mandatorily required, rendered it completely defective. As regards the valuation report, it was submitted that the same included structures in the valuation when only open land had been mortgaged. Even with regard to the open land, the entire piece of land mortgaged was not taken into consideration while determining the valuation, thereby rendering it fundamentally defective. It was further submitted that the rights of the auction purchaser were not crystallized and therefore, the DRT was justified in directing the petitioner bank to undertake a fresh auction, which in the facts and circumstances of the case, was a just, fair and reasonable order, requiring no interference at the hands of this Court exercising writ jurisdiction. On this basis, it was submitted that the writ petitions deserved to be dismissed.

20. Having heard the learned counsel for the parties, we find that since the respondent guarantors have specifically raised a ground with

regard to the maintainability of the writ petitions, it would be appropriate to first deal with the said contention. The respondent guarantors have asserted that in the light of statutory remedy of appeal available to the petitioners of filing an appeal before the DRAT under the provisions of the Securitisation Act, these writ petitions filed directly to challenge the order of the DRT are not maintainable. It has to be appreciated that there is a difference between the concept of “maintainability” on the one hand and that of “entertainability” on the other.

21. The Supreme Court in the case of **Godrej Sara Lee Limited Vs. Excise and Taxation Officer-cum-Assessing Authority and others** *(supra)*, considered the said two concepts and made the following observations:-

> “4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ

> petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.”

22. Thus, availability of an alternative remedy does not operate as an absolute bar to the maintainability of a writ petition, and in a given case, the High Court can entertain a writ petition despite availability of an alternative remedy. Evidently, the rule of not entertaining a writ petition due to availability of an alternative remedy is a self-imposed restraint by the writ court and it is a rule of policy, convenience, prudence and discretion, rather than a rule of law. In other words, if the petitioner before the writ court makes out a case for entertaining the writ petition despite availability of alternative remedy, the said writ petition can be entertained and appropriate orders can be passed in such a writ petition.

23. In these writ petitions, the petitioners have invoked the writ of *certiorari*, asserting that the DRT, being a subordinate tribunal, has far exceeded its jurisdiction while passing the impugned order. The grounds raised while claiming such jurisdictional error include the assertion that the impugned order is in the teeth of settled law laid down by the Supreme Court in the case of **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)* and **M. Rajendran and others vs. KPK Oils and Proteins India Private Limited and others** *(supra)*. Apart from this, it is in the teeth of the relevant provision i.e. Section 13(8) of the Securitisation Act, that the impugned order amounts to granting final relief at the interim stage and further, that the reliefs granted are well beyond the prayers in the securitisation application as well as the interim application filed by the respondent guarantors before the DRT.

24. In the case of **East India Commercial Company Limited, Calcutta and another Vs. Collector of Customs, Calcutta** *(supra)*, the Supreme Court held that if an order is passed in the teeth of the position of law laid down by a superior court, such an order itself is rendered without jurisdiction. Although the said position has been laid down while discussing jurisdiction under Article 227 of the Constitution of India, which concerns supervisory jurisdiction of the High Courts, it is a settled position of law that the jurisdiction that the High Courts exercise while invoking the writ of *certiorari*, to a certain extent, overlaps with the jurisdiction exercised under Article 227 of the Constitution of India. Thus, the observations made in the said judgment are relevant to test the ground of maintainability raised on behalf of the respondent guarantors.

25. The relevant portion of the said judgment of the Supreme Court in the case of **East India Commercial Company Limited, Calcutta and**

another Vs. Collector of Customs, Calcutta *(supra)* reads as follows:

> "31. … It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working : otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."

26. In the case of **Union of India and another Vs. State of Haryana and another** *(supra)*, the Supreme Court in the context of maintainability of writ petition under Article 226 of the Constitution of India in the face of an alternative remedy observed as follows:

> **"3.** Having heard learned counsel for the parties at length, we are of the view that these are the matters which should not have been dismissed by the respective High Courts in suggesting an alternative remedy. The question raised was pristinely legal which required determination as to whether provision of telephone connections and instruments amounted to sale and even so why was the Union of India not exempt from payment of sales tax under the respective statutes. The respondents counter such stance. We think the question raised was fundamental in character and need not have been put through the mill of statutory appeals in the hierarchy. For this reason alone, we set aside the respective impugned orders of the High Courts and remit the writ petitions back to them for decision in accordance with law. The recovery of tax would stand stayed till the disposal of the writ petitions. Ordered accordingly. No costs."

27. Thus, it is evident that if a fundamental question is raised that goes to the very root of the matter, the party approaching the writ court need not necessarily be relegated to the mill of statutory appeals in the hierarchical context of a statutory framework. In the cases of **Vishnu Babu Tambe Vs. Apurva Vishnu Tambe** *(supra)* and **Samir Narain Bhojwani Vs. Aurora Properties and Investments and another** *(supra)*, the Supreme Court clearly indicated that if the impugned order grants final relief at interlocutory stage, it is a manifest error and it amounts to exceeding jurisdiction.

28. This would also apply to a situation where the impugned order grants relief beyond the prayers that are made by the concerned applicant before the tribunal.

29. We find that the petitioners in these writ petitions have raised such grounds and they have claimed that there is a fundamental procedural irregularity committed by the DRT in passing the impugned order. This is raised as a facet of natural justice and it is claimed that therefore, the writ petition is clearly maintainable. We are of the view that when the said contention raised on behalf of the petitioners is appreciated in the proper perspective, the argument of prejudice raised on behalf of the respondent guarantors cannot be accepted. In such a situation, the respondent guarantors cannot fall back on the argument that despite violation of principles of natural justice, as per settled law, the petitioners would still have to show some prejudice suffered by them and only then could the writ petitions be maintainable. Thus, if the petitioners succeed in demonstrating that there is a jurisdictional error and a fundamental procedural irregularity committed by the DRT while passing the impugned order, the argument of the respondent guarantors regarding maintainability of the writ petitions will have to be rejected. In that sense, the issues appear to be intertwined.

30. There can be no quarrel with the proposition laid down by the Supreme Court in the case of **United Bank of India Vs. Satyawati Tandon and others** *(supra)*, reiterated in the case of **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)*, that ordinarily a writ petition would not be maintainable in the face of availability of alternative efficacious remedy, but the aforesaid self-restraint and the rule of policy, convenience and discretion would not be exercised by this Court if a fundamental jurisdictional error is found in the order of the tribunal.

31. The true nature of the impugned order passed by the DRT will have to be examined in order to consider the specific contentions raised on behalf of the petitioners in this regard. By the impugned order dated 09.01.2026, the DRT set aside the auction conducted on 21.06.2025. The amount deposited by the petitioner auction purchaser was directed to be returned back and further, the respondent guarantors were directed to remit the sum of Rs. 26.10 crores with the petitioner bank on or before 31.03.2026. We find that the directions contained in the impugned order amount to permitting redemption of the mortgage. It is difficult to understand the argument of the respondent guarantors that even if the effect is of redeeming the mortgage, such was not the relief claimed by the respondent guarantors and instead, they had merely challenged the actions undertaken by the petitioner bank under the provisions of the Securitisation Act. We find that the petitioner bank as well as the petitioner auction purchaser have specifically raised the issue of extinguishing of rights of redemption in the facts and circumstances of the present case. It was also specifically argued on their behalf that the DRT would not have any inherent power to set aside a sale when no such specific prayer was made in the securitisation application itself. We find that the DRT failed to discuss the said aspects of the matter in the impugned order and proceeded to pass an order that effectively

amounted to allowing redemption for mortgage.

32. In the case of **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)*, the Supreme Court specifically took into consideration the effect of the amendment in Section 13(8) of the Securitisation Act. The comparison between the pre-amendment position and the post-amendment position was examined and thereafter, the Supreme Court specifically made certain observations, which are relevant for the present case. Relevant portions of the judgment of the Supreme Court in the case of **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)* read as follows:

> "61. Before proceeding with the analysis of the provision of Section 13(8) of the Sarfaesi Act, it would be appropriate to refer to the said provision as it stood prior to the amendment and as it stands after the amendment, which is given below:

Pre-amendment Section 13(8)	*Post-amendment Section 13(8)*
"13. (8) If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset."	"13. (8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets— (i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and (ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

* * * * *

64. We are of the view that the failure on the part of the borrower in tendering the entire dues including the charges, interest, costs, etc. before the publication of the auction-notice as required by Section 13(8) of the Sarfaesi Act, would also sufficiently constitute extinguishment of right of redemption of mortgage by the act of parties as per the proviso to Section 60 of the 1882 Act. Furthermore, in the case on hand, there was no claim for right of redemption by the borrower either before the publication of the auction-notice or even thereafter. The borrowers entered into the fray only after coming to know of the confirmation of auction. Be that as it may, once Section 13(8) stage was over and auction stood concluded, it could be said that there was an intentional relinquishment of his right of redemption under Section 13(8), whereby the Bank declared the appellant as the successful auction-purchaser having offered the highest bid in accordance with the terms of the auction-notice.

65. The Sarfaesi Act is a special law containing an overriding clause in comparison to any other law in force. Section 60 of the 1882 Act, is a general law vis-à-vis the amended Section 13(8) of the Sarfaesi Act which is special law. The right of redemption is clearly restricted till the date of publication of the sale notice under the Sarfaesi Act, whereas the said right continues under Section 60 of the 1882 Act till the execution of conveyance of the mortgaged property. The legislative history has been covered in the preceding paragraphs of this judgment and how Parliament desired to have express departure from the general provision of Section 60 of the 1882 Act. The Sarfaesi Act is a special law of recovery with a paradigm shift that permits expeditious recovery for the banks and the financial institutions without intervention of courts. Similarly, Section 13(8) of the Sarfaesi Act is a departure from the general right of redemption under the general law i.e. the 1882 Act. Further, the legislature has in the Objects and Reasons while passing the amending Act specifically stated "to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts…". Thus, while interpreting Section 13(8) vis-à-vis Section 60 of the 1882 Act, an interpretation which furthers the said Objects and Reasons should be preferred and adopted. If the general law is allowed to govern in the manner as sought to be argued by the borrowers, it will defeat the very object and purpose as well as the clear language of the amended Section 13(8).

> 69. However, with the advent of the 2016 Amendment, Section 13(8) of the Sarfaesi Act now uses the expression "before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets" which by no stretch of imagination could be said to be in consonance with the general rule under the 1882 Act that the right of redemption is extinguished only after conveyance by registered deed. Thus, in the light of clear inconsistency between Section 13(8) of the Sarfaesi Act and Section 60 of the 1882 Act the former special enactment overrides the latter general enactment in light of Section 35 of the Sarfaesi Act. Thus, the right of redemption of mortgage is available to the borrower under the Sarfaesi Act only till the publication of auction-notice and not thereafter, in light of the amended Section 13(8)."

33. The said position of law was further reiterated by the Supreme Court in the case of **M. Rajendran and others vs. KPK Oils and Proteins India Private Limited and others** *(supra)*. In the said judgment, the Supreme Court took into consideration the issue as regards the manner in which its earlier judgment in the case of **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)* was being construed by various High Courts. The Supreme Court further took into consideration a situation where the secured asset was sought to be sold, not by way of auction but by way of private treaty. Taking into consideration the aforesaid situation also, the Supreme Court in the case of **M. Rajendran and others vs. KPK Oils and Proteins India Private Limited and others** *(supra)* held as follows:-

> "105. To put it simply, as per sub-section (8) of Section 13 of the SARFAESI Act, a borrower can tender the amount of dues to the secured creditor along with all costs, charges and expenses, at any time, before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be.
>
> 106. A borrower has no unfettered right to tender such amount of dues, as stipulated in Section 13(8), after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case

> may be, because the restriction on the secured creditor, from transferring the secured asset, envisaged under clause(s) (i) and (ii) of the said provision, would only be attracted, if the dues are tendered prior to the publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be. Where the borrower tenders such dues after the publication of the notice stipulated in Section 13(8), the secured creditor is not bound to accept it, and can continue to proceed with the transfer of the secured asset, by way of lease, assignment or sale."

34. Thus, it is abundantly clear that once the auction sale notice is published, the borrower completely loses the right to seek redemption of the mortgage by operation of Section 13(8) of the Securitisation Act, as amended, and in the light of the clear position of law laid down by the Supreme Court in the aforementioned judgments. In the present case, it was incumbent upon DRT to examine the said aspect of the matter, particularly in light of the fact that such specific objection was raised on behalf of the petitioners.

35. In the present case, on 27.03.2025, the petitioner bank issued specific notice to the respondent borrower through its liquidator, as well as the resolution professional appointed by the NCLT in the context of the personal insolvency of the respondent guarantors. They did not raise any objection to the steps contemplated by the petitioner bank in respect of auction sale of the secured asset. It is in this backdrop that the petitioner bank issued the auction sale notice and published the same in newspapers on 16.05.2025. The moment the aforesaid auction sale notice was published, by operation of Section 13(8) of the Securitisation Act, the right of the respondent borrower to redeem the mortgage was extinguished. This has been emphatically laid down by the Supreme Court in the aforementioned judgments in the cases of **Celir LLP Vs. Bafna Motors (Mumbai) Private Limited and others** *(supra)* and **M. Rajendran and others vs. KPK Oils and Proteins India Private**

Limited and others *(supra)*. The DRT, while passing the impugned order, which effectively granted redemption of mortgage, ought to have considered the said position before passing any order in the matter. Instead, the DRT went ahead to examine the merits of the matter, which demonstrates the jurisdictional error committed by the DRT. In the process, the DRT also committed an error in granting final relief while disposing of the interim application. We find that since the order of the DRT is in the teeth of the settled position of law, in terms of the law laid down by the Supreme Court in the case of **East India Commercial Company Limited, Calcutta and another Vs. Collector of Customs, Calcutta** *(supra)*, the impugned order is rendered without jurisdiction.

36. We also find that the nature of the impugned order is such that it amounts to granting final relief at interim stage. In the case of **Samir Narain Bhojwani Vs. Aurora Properties and Investments and another** *(supra)*, the Supreme Court held that when such a situation occurs, where final relief is granted at interlocutory stage, it amounts to a manifest error and such an order can be said to be in excess of jurisdiction.

37. We have also perused the securitisation application as well as the interim application and we find that there is no prayer clause in the applications for setting aside of the auction sale. Yet, the DRT passed the impugned order on the interim application, setting aside the auction and giving further directions. This amounts to granting relief that is not even prayed by the respondent guarantors in the aforementioned applications. This is another instance of the DRT having committed a jurisdictional error while passing the impugned order. We are unable to accept the contention of the respondent guarantors that the prayer clauses were pertaining to the situation when the securitisation application and the interim application were filed on 18.06.2025. As a matter of fact,

subsequent events had occurred and the parties were not only before the DRT, but before this Court in writ petitions filed by the petitioners in which specific directions were issued. Nothing prevented the respondent guarantors from appropriately amending the securitisation application as well as the interim application for making specific prayers for the relief of setting aside of the auction. No such steps were taken by the respondent guarantors, which the DRT completely failed to appreciate and it proceeded as if it was finally deciding the pending applications, including the securitisation application.

38. At this stage, it would be relevant to note some glaring facts in the present case. It is an admitted position that the notice under Section 13(2) of the Securitisation Act was issued as far back as on 16.01.2020 by the petitioner bank. As per law, the notice was duly served upon the borrower as well as the guarantors. It is the matter of fact that the respondent borrower went into corporate insolvency and eventually into liquidation. The liquidator was duly put to notice with regard to the actions being undertaken by the petitioner bank. Equally, the resolution professional appointed in the context of personal insolvency proceedings pending before the NCLT as against the respondent guarantors, was also duly put to notice about the actions being undertaken by the petitioner bank under the Securitisation Act. Not only this, the liquidator appeared before the DRT in the pending proceeding and specifically recorded that he had no objection for the sale of the secured asset in terms of the actions undertaken by the petitioner bank as a secured creditor. The resolution professional concerning the personal insolvency proceedings pending against the respondent guarantors also did not raise any objection. We find that the facts that come to the fore clearly demonstrate that the respondent guarantors chose to remain fence-sitters from the year 2020, despite the fact that they were aware about the proceedings being undertaken by the petitioner bank in terms of the

notice issued under Section 13(2) of the Securitisation Act. For more than a period of five years, no steps were taken in the matter. Even when the securitisation application along with the interim application were filed before the DRT, no efforts were made to amend the applications in an appropriate manner in the light of the auction sale having been conducted and the auction purchaser having come into the picture. This demonstrates that the DRT committed a manifest error in not taking into consideration the aforesaid circumstances and also committed a grave procedural irregularity by granting final relief at interim stage and also granting reliefs well beyond the specific prayers made in the applications filed by the respondent guarantors.

39. We find that the petitioners in these petitions have specifically invoked the writ of *certiorari*. The discussions and findings rendered hereinabove clearly show that the DRT, while passing the impugned order dated 09.01.2026, committed a serious jurisdictional error, and therefore, this Court is required to invoke the writ of *certiorari* and interfere with the impugned order. This Court while exercising writ jurisdiction can also not ignore the admitted position on facts that the respondent guarantors are themselves undergoing the process of personal insolvency before the NCLT. They have no net worth and yet after more than five years, they approached the DRT seeking certain reliefs and the DRT without examining the totality of facts ended up granting reliefs far beyond the specific prayers made in the two applications filed by the respondent guarantors. It is also significant to note that the respondent borrower, through the liquidator, has already given no objection to the steps taken by the petitioner bank under the provisions of the Securitisation Act. The respondent guarantors cannot be in a position better than the original borrower and enjoy reliefs, which even the original borrower would not be entitled to.

40. In this background, we do not find substance in the contention raised on behalf of the respondent guarantors that they were simply challenging the validity of the process undertaken by the petitioner bank under the provisions of the Securitisation Act and that they never claimed any redemption of mortgage. This Court is concerned with the nature of the impugned order passed by the DRT, which effectively shows that the mortgage has been redeemed. In this context, reliance placed on behalf of the respondent borrowers on the judgement of the Madras High Court in the cases of **N. R. Sadasivam Vs. Indian Bank** *(supra)* and **Star Trace Engineering Division Vs. Registrar, DRT and others** *(supra)*, to contend that if eventually Section 13(2) notice under Securitisation Act issued by the petitioner bank is found to be unsustainable, the mortgage would then be open for redemption. Even if that be so, the said question would have to be decided in the securitisation application, which is still pending before the DRT. In fact, this further shows that the DRT erred in granting final relief at interim stage, thereby re-enforcing the conclusion that this was a fundamental jurisdictional error committed by the DRT. In this situation, we find that although elaborate submissions were made on behalf of the respondent guarantors to defend the findings rendered by the DRT on the alleged defects in the Section 13(2) notice issued by the petitioner bank and the valuation report, having reached the conclusions hereinabove, we do not find it necessary to go into the said submissions. It was for the DRT to have first examined as to whether any interim relief could be granted in the application. Instead, the DRT discussed issues pertaining to the merits of the challenge during the pendency of the securitisation application and ended up granting relief that could not have been granted in the light of the settled position of law. As a matter of fact, in the face of the aforesaid findings rendered in the impugned order passed by the DRT in the interim application, there is nothing left to be decided in the

securitisation application, which itself demonstrates the error committed by the DRT.

41. We also find that the DRT gave emphatic findings with regard to purported defects in the valuation report. It is to be noted that the respondent guarantors had also produced their valuation report, which as a matter of fact, recorded the value of the structures to be zero. As regards the area of the land taken into consideration and the valuation report of the petitioner bank, we do find that the valuer took into consideration the fact that a part of the land was acquired and utilized for construction of road. It was in this backdrop that the actual valuation of the land was undertaken on the piece of land available for auction sale and the DRT completely failed to appreciate the said aspect of the matter. In any case, such findings could have been only interlocutory in nature, but the tenor of the order of the DRT, which is impugned in these writ petitions, shows that final and emphatic findings were rendered by the DRT, which further demonstrates the grave error committed while passing the impugned order.

42. In view of the above discussion, we find the impugned order to be unsustainable. The DRT could not have granted reliefs in the nature of final relief at interlocutory stage and that too, effectively amounting to redemption of mortgage, when in the light of the position of law clarified by the Supreme Court, such a relief could not be granted even finally in the proceedings pending before the DRT. As a result, the writ petitions are allowed. The impugned order is quashed and set aside. The DRT shall proceed to decide the securitisation application expeditiously, strictly in accordance with law. Although rival submissions were made on the locus of the respondent guarantors, the said question is left open to be decided by the DRT while considering the securitisation application. We have expressed no opinion on the said aspect of the

matter, which DRT shall decide in accordance with law.

43. Pending applications, if any, in these writ petitions, are also disposed of.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

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