

REPORTABLE

Sl. No. 3-5

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.A. No. 52 of 2018

1. Shri Oinam Somorendro Meetei aged about 51 Years, S/o (L) Oinam Mani Singh, a resident of Wangkhei Khunou, near Citizen Club, P.O. Imphal, P.S. Porompat, Imphal East District, Manipur 795001.
2. Shri Thokchom Arunkumar aged about 47 Years, S/o Thokchom Jugol Singh, a resident of Thangmeiband Thingel Leikai, P.O. Imphal, P.S. Lamphel, Imphal West District, Manipur - 795001.

Appellants

Vs.

1. Shri Mayengbam Tej Singh aged about 39 Years, S/o M. Shrilal Singh, Propreitor, M/s M.S. & Sons, Singjamei Mayengbam Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur 795001.

Private Respondent/writ petitioner

2. The Central Bank of India represented by its Branch Manager, M.G. Avenue, Thangal Bazar, P.O. & P.S. Imphal, Imphal West District, Manipur-795001.
3. The Chief Manager, Central Bank of India, Regional Office, Shaktigarh Path, GS Road, 3rd Floor Central Bank, Bhangagarh, Guwahati – 781005.

Official Respondents

With

MC [W.P. (C)] No. 362 of 2018

Mayengbam Tej Singh, aged about 39 years old, S/o M. Shrilal Singh, Proprietor, M/S M.S & Sons, Singjamei Mayengbam Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur - 795008.

Applicant

Vs.

1. The Central Bank of India, represented by its Branch Manager, Imphal Branch, M.G. Avenue, Thangal Bazar, Imphal West District, Manipur - 795001.
2. The Chief Manager, Central Bank of India, Regional Office, 3rd Floor Central Bank, Bhangagarh, Guwahati - 5.
3. Oinam Somorendro Meetei, aged about 51 years, S/o late Oinam Mani Singh, a resident of Wangkhei Khunou, near citizen Club, P.O. & P.S Porompat, Imphal East District, Manipur-795001.
4. Thokchom Arunkumar, aged about 47 years, S/o Thokchom Jugol Singh, a resident of Thangmeiband Thingel Leikai, P.O. Imphal, P.S. Lamphel, Imphal West District, Manipur-795001.

Respondents

**With
W.A. No. 61 of 2018**

1. Central Bank of India, represented by its Branch Manager, Imphal Branch, M.G. Avenue, Thangal Bazar, Imphal West District, Manipur.
2. The Chief Manager, Central Bank of India, Regional Office, 3rd Floor Central Bank, Bhangagarh, Guwahati-5

Appellants/Respondent No. 1 & 2

Vs.

1. Mayengbam Tej Singh, aged about 39 years, S/o M. Shrilal Singh, Proprietor, M/s M.S. & Sons, Singjamei, Imphal West District, Manipur.
2. Oinam Somorendro Meetei, S/o Late Oinam Mani Singh, a resident of Wangkhei Knunou, near citizen club, P.O & P.S. Porompat, Imphal East District, Manipur.
3. Thokchom Arunkumar, S/o Thokchom Jugol Singh, a resident of Thangmeiband Thingel Leikai, P.O. Imphal, P.S. Lamphel, Imphal West District, Manipur.

Respondents

BEFORE
HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For appellants in W.A. No. 52 of 2018	Mr. Md. Abdul Baqee Khan, Advocate, led by Mr. N. Jotendro, Sr. Advocate
For respondents in W.A. No. 52 of 2018	Mr. Anjan Prasad Sahu along with Mr. Nakato Khwairakpam, Advocate for respondent No. 1 Mr. Mukesh Sharma, Advocate for respondent Nos. 2 & 3
For appellants in WA No. 61 of 2018	Mr. Mukesh Sharma, Advocate
For respondents in W.A. No. 61 of 2018	Mr. Anjan Prasad Sahu along with Mr. Nakato Khwairakpam, Advocate for respondent No. 1 Mr. Md. Abdul Baqee Khan, Advocate for respondent Nos. 2 & 3, led by Mr. N. Jotendro, Sr. Advocate
For applicant in MC [W.P. (C)] No. 362 of 2018	Mr. Anjan Prasad Sahu along with Mr. Nakato Khwairakpam, Advocate
For respondents in MC [W.P. (C)] No. 362 of 2018	Mr. Mukesh Sharma, Advocate for respondent Nos. 1 & 2, Mr. Md. Abdul Baqee Khan, Advocate for respondent Nos. 3 & 4, led by Mr. N. Jotendro, Sr. Advocate
Date of Judgment & Order	27.03.2026

COMMON JUDGMENT AND ORDER
(ORAL)

(M. Sundar, CJ)

[1] Captioned two main 'Writ Appeals' ('WAs' in plural and 'WA' in singular for the sake of brevity) are directed against the same order. The order that has been assailed in both WAs is an order dated 09.10.2018 made by a Hon'ble Single Bench of this Court in W.P. (C) No. 227 of 2018

and this order shall be referred to as 'impugned order' for the sake of convenience and clarity. Subject matter of caption WAs pertain to a 'One Time Settlement' ('OTS' for the sake of brevity) between a Nationalized Bank and a borrower and sale of the immovable property of borrower (given as security for loan) by the Bank in an auction to third-party auction purchasers. To be noted, this Court will dilate more on facts elsewhere infra in this common order which will govern the captioned two WAs and captioned 'Miscellaneous Case' ('MC' for the sake of brevity).

[2] W.A. No. 52 of 2018 has been filed by the auction purchasers and WA No.61 of 2018 has been filed by the Nationalized Bank both assailing the impugned order (as already alluded to supra). As regards the captioned MC, the same has been taken out by the borrower, post impugned order but pending captioned WAs with a prayer to permit the borrower to deposit the OTS amount by way of a cheque (to be noted, a photocopy of the full OTS amount settlement cheque has been annexed to the MC).

[3] Reverting to factual matrix and central theme of lis qua captioned WAs and MC, one 'Mayengbam Tej Singh, son of M. Shrilal Singh, Propreitor, M.S. & Sons' (hereinafter 'borrower' for the sake of convenience) sometime in 2012 availed cash credit facility to the tune of about Rs. 45,000,00/- (Rupees Forty Five lakhs) from 'the Central Bank of India, Imphal Branch, Manipur' (hereinafter 'said Bank' for the sake of convenience and clarity); that the account became 'NPA' ('Non-Performing

Asset' for the sake of brevity); that the borrower filed a writ petition in W.P. (C) No.173 of 2017 regarding this account, i.e, NPA; that this 'writ petition' ('WP' for the sake of brevity) came to be disposed of by a Hon'ble Single Bench in and by a short order dated 24.04.2017 recording the stated positions of learned counsel for said Bank and learned counsel for borrower (borrower submitted that he would pay the outstanding amount in a timeframe of one month to which the Bank counsel agreed); that the one month time frame is from the date of receipt of a copy of the order which was on 03.05.2017 and this further means that the one month time frame elapsed on 03.06.2017; that thereafter said bank on 25.01.2018 came up with a OTS proposal making it clear that it is a special OTS scheme, borrower's account (NPA) is eligible under the special OTS scheme, a sum of Rs. 41,25,000/- (Rupees Forty One Lakh & Twenty Five Thousand) should be deposited as 'full and final settlement' and that this offer is valid up to 31.03.2018; that according to said Bank, on 29.01.2018, it wrote a letter to the borrower altering the special OTS cut-off date, viz., advancing the cut-off date from 31.03.2018 to 10.02.2018 but there is serious dispute about this letter having been served on the borrower; that while the borrower contended that this letter was never received by him, said Bank contended that the Chief Manager of said Bank went over to the borrower's place, found the borrower somewhere near the 'place' (described as 'land') and attempted to give it to the borrower but the borrower refused to receive the same (there will be a little more elaboration on this elsewhere infra in this order) but suffice to write that

this was the bone of contention and the crux and gravamen of the issue in the writ petition before the Hon'ble Single Judge; that on 21.02.2018, the borrower sent an e-mail to said Bank inter alia referring to the OTS offer and saying that said Bank has in the interregnum, inter alia resorted to taking possession of immovable property given as security on 16.02.2018, much before the 31.03.2018 cut-off but making it clear that the borrower is accepting the OTS offer and he is ready to settle as per the OTS offer made on 25.01.2018; that on the very next day, the Chief Manager of the said Bank had written a letter (obviously letter dated 22.02.2018) bearing Reference No. CBI/IMP/2017-18/00177 inter alia stating that the borrower has lost his right of redemption; that in this 22.02.2018 letter there is a reference to an earlier letter dated 25.01.2018 from the said Bank bearing letter No. IMP/SARFAESI/2017-18/1449A but that letter vide which said Bank claims that it intimated the borrower that said immovable property is being put up for auction and borrower has lost his right of redemption has not been placed before this Court (either before the Hon'ble Single Bench or before this Division Bench); that thereafter the borrower filed W.P. (C) No. 227 of 2018 on 22.03.2018 inter alia assailing (a) the 22.02.2018 communication cancelling the special OTS proposal and (b) a e-auction notice dated 16.02.2018; that this writ petition, after full contest came to be allowed by a Hon'ble Single Bench in and vide the impugned order; that in this W.P. (C) No.227 of 2018, said Bank represented by its Branch Manager and Chief Manager of said Bank were arrayed as respondent Nos. 1 and 2 respectively and the two auction

purchasers were arrayed as respondent Nos. 3 & 4; that for completion of facts, it is deemed appropriate to write that details of the immovable property (which has been given as security by the borrower) is Dag No.1019, Patta No.59/342(pt)(Old) 255 (New), situate in Imphal West District, Mauza Oinam Thingel Revenue Village No.59 admeasures an Area 0.0233 Hectare or thereabouts (to be noted, this description is as per the e-auction sale notice dated 16.02.2018 which was put to challenge in the writ petition); that contending that they are aggrieved by the impugned order, the auction purchasers have filed captioned W.A. No. 52 of 2018 and said Bank has filed captioned W.A. No.61 of 2018 as already alluded to supra; that for further completion of facts, it is deemed appropriate to write that inter alia by an order dated 17.01.2019 made by Hon'ble predecessor Bench, the impugned order of Hon'ble Single Bench has been stayed pending captioned Writ Appeals and that the same is now operating.

[4] In the hearing today, Mr. N. Jotendro, learned senior counsel instructed by Mr. Md. Abdul Bagee Khan, learned counsel on record for auction purchasers, Mr. Mukesh Sharma, learned counsel for said Bank and Mr. Anjan Prasad Sahu, learned counsel along with Mr. Nakato Khwairakpam, for the borrower are before this Court.

[5] Mr. N. Jotendro, learned senior counsel who commenced the submissions, notwithstanding very many/myriad grounds in the WA

memorandum, predicated his campaign against the impugned order on two points and the two points are as follows:

- (a) There is no mention about the earlier WP filed by the borrower namely, W.P. (C) No. 173 of 2017 and this according to learned senior counsel is suppression and that it casts serious doubts qua the bonafides of the borrower is his further say;
- (b) remedy for the borrower is by way of approaching the 'Debt Recovery Tribunal' ('DRT' for the sake of brevity) and on the teeth of alternative remedy, the borrower ought not to have filed the WP which culminated in the impugned order and the WP is not maintainable is his further say.

To be noted, in reply submissions, learned senior counsel submitted that third party interests have been created and that the rights of the auction purchasers are jeopardized leaving the auction purchasers in difficulty.

[6] As regards learned counsel for said Bank, learned counsel heavily relied on afore-referred communication dated 22.02.2018 bearing Reference No. CBI/IMP/2017-18/00177 from the Chief Manager of said Bank to buttress his submission that the OTS has been withdrawn. It was also submitted that on the teeth of DRT and 'Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

Act, 2002' (54 of 2002) ('SARFAESI Act' for the sake of brevity and convenience) the WP is not maintainable.

[7] As regards the borrower, it was submitted that the DRT was approached, i.e., DRT Guwahati, but Registry of DRT refused to even entertain the borrower's application and thereafter the writ petition was filed.

[8] This Court now embarks upon the legal drill of setting out the points urged, discussion on the same and giving its dispositive reasoning one after the other and an adumbration of the same is as follows:

(i) The first point turns on earlier WP and the borrower not mentioning about the earlier WP in the WP which culminated in the impugned order. In the considered view of this Court, this cannot be construed as suppression for more than one reason. The reasons are, after the order in the earlier WP dated 24.04.2017 and after the one month timeframe thereat elapsed on 03.06.2017, said Bank made the special OTS offer on 25.01.2018. This is clearly novation (earlier short order only records the stated position of parties) and therefore the earlier order does not operate for any/all practical purposes as between the parties, *i.e.*, the borrower and the said Bank. Be that as it may, the other reason is, if a

fact has not been mentioned, the party not mentioning the fact should have gained from not mentioning the fact or it should have been done with the intention of getting a gain and only in such an event the omission will amount to suppression, otherwise it will remain as omission. In any event, the said Bank was put on notice in the subsequent WP which culminated in the impugned order and all facts were placed before Hon'ble Single Bench before the impugned order was rendered. Therefore, this Court is of the considered view that this point as regards not mentioning the earlier WP and order dated 24.04.2017 thereat pales into insignificance.

(ii) This takes this Court to the alternative remedy point. As regards alternative remedy, the law is well settled that alternative remedy rule is not an absolute rule and it is a rule of discretion. It is also well settled that it is a self-imposed restraint qua writ courts/writ jurisdiction. This Court (though noticed at the Bar in the hearing) reminds itself that in a long line of authorities starting from **Dunlop India** case [**Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and others** reported in **(1985) 1 SCC 260**] rendered on 30.11.1984, **Satyawati Tondon** case

[**United Bank of India Vs. Satyawati Tondon and others** reported in **(2010) 8 SCC 110**] rendered on 26.07.2010, **Commercial Steel** case law [**Assistant Commissioner of State Tax and Others Vs. Commercial Steel Limited (Civil Appeal No. 5121 of 2021)**] reported in **(2022) 16 SCC 447** rendered on 03.09.2021, **Mathew K.C.** case [**Authorized Officer, State Bank of Travancore and Another Vs. Mathew K.C.** reported in **(2018) 3 SCC 85**] rendered on 30.01.2018 and **State of Maharashtra and Others Vs. Greatship (India) Limited** reported in **2022 SCC OnLine SC 1262** rendered on 20.09.2022, Hon'ble Supreme Court has repeatedly held that threshold barrier is stiff in fiscal law statutes qua alternative remedy Rule but all these case laws recognize the principle that alternative remedy Rule is not an absolute Rule, it is a Rule of discretion and it is a self-imposed restraint qua writ courts. Be that as it may, the case at hand is not one arising under fiscal law.

In this regard, this Court deems it appropriate to respectfully follow **Whirlpool** principle (which has come to stay in legal parlance as **Whirlpool** exceptions) being principle laid down by Hon'ble Supreme Court in

Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others reported in **(1998) 8 SCC**

1 rendered on 26.10.1998. On facts, in **Whirlpool**, the Registrar of Trade Marks suo moto issued a 'Show Cause Notice' ('SCN' for the sake of brevity) calling upon the noticee to show cause as to why the certificate of registration of Trade Mark should not be cancelled inter alia owing to a competing/rival claim qua the Trade Mark concerned. This SCN was assailed by the noticee (Whirlpool Corporation) in Bombay High Court, the challenge was unsuccessful and the matter was carried to Hon'ble Supreme Court. In this factual backdrop, Hon'ble Supreme Court carved out specific exceptions *qua* alternative remedy after making it clear that the power to issue prerogative writs under Article 226 of the Constitution is plenary and besides the specific writs mentioned in Article 226, it can be exercised for 'any other purpose'. In dealing with alternative remedy, Hon'ble Supreme Court dealt with earlier decisions describing the same to be decisions rendered in the evolutionary era of constitutional law and made it clear that exceptions to alternative remedy qua Article 226 include cases (a) where the writ petition seeks enforcement of any of fundamental rights; (b) where there is violation of principles of natural

justice; (c) where the order or the proceedings are wholly without jurisdiction; and (d) where the vires of an Act is challenged. To be noted, in **Whirlpool**, relevant paragraphs are paragraphs 14 and 15 which read as follows:

'14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on

some old decisions of the evolutionary era of the constitutional law as they still hold the field.'

In the above paragraph 15 of **Whirlpool**, though there is a reference to three contingencies, four exceptions have been adumbrated. This Court respectfully writes that the exceptions are four in number by following a later judgment of Hon'ble Supreme Court in **Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Others** reported in **(2023) SCC OnLine SC 95 (2023 INSC 92)** rendered on 01.02.2023 where Hon'ble Supreme Court reiterated **Whirlpool** and made it clear that Whirlpool carves out four exceptions to alternative remedy qua writ jurisdiction.

Godrej Sara Lee on facts is one where assessment orders under the 'Haryana Value Added Tax Act, 2003' ('Haryana VAT Act' for the sake of brevity) were called in question on the teeth of an alternative remedy of appeal vide Section 33 of Haryana VAT Act. In this factual background, Hon'ble Supreme Court reiterated **Whirlpool** and also **Commercial Steel Limited** (to be noted, this Court has respectfully referred to **Commercial Steel Limited** supra for the principle that alternative remedy Rule is not an absolute

Rule). The relevant paragraphs in **Godrej Sara Lee** are paragraphs 6, 7 & 8 and the same read as follows:

'6. At the end of the last century, this court in paragraph 15 of its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai) carved out the exceptions on the existence whereof a writ court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

- (i) where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) where there is violation of principles of natural justice;
- (iii) where the order or the proceedings are wholly without jurisdiction; or
- (iv) where the vires of an Act is challenged.

7. Not too long ago, this court in its decision reported in [2021] SCC Online SC 884 (Assistant Commissioner of State Tax v. Commercial Steel Limited)" has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of U. P. v. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if

investigation into facts is unnecessary, the High Court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this court found the issue raised by the appellant to be pristinely legal requiring determination by the High Court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.'

This Court also deems it appropriate to write that even before **Godrej Sara Lee**, Hon'ble Supreme court in the oft quoted **Ambuja Cement** case [**State of H.P. and Others vs. Gujarat Ambuja Cement Ltd. and Another** reported in **(2005) 6 SCC 499**] rendered on 18.07.2005 reiterated **Whirlpool** principle/**Whirlpool** exceptions. **Ambuja Cement**, on facts, is a case where action taken by Sales Tax Authorities and revisional orders setting aside assessment orders under the 'Central Sales Tax Act, 1956' ('CST Act' for the sake of brevity) and the 'Himachal Pradesh General Sales Tax Act, 1968' ('HPGST Act' for the sake of brevity) were questioned inter alia on

the ground of exemptions. In resisting such a challenge, it was contended by State that alternative remedy was available to the assessee under CST Act as well as HPGST Act and therefore the revisional orders ought not to have been challenged by way of a writ petition. While dealing with this alternative remedy plea, Hon'ble Supreme Court reiterated **Harbanslal Sahnia** principle [**Harbanslal Sahnia and Another vs. Indian Oil Corpn. Ltd. and Others** reported in **(2003) 2 SCC 107**] rendered on 20.12.2002. To be noted, **Harbanslal Sahnia** principle is one where Hon'ble Supreme Court held that alternative remedy is a Rule of discretion and not one of compulsion and it is further to be noted that **Harbanslal Sahnia** followed and reiterated **Whirlpool**. Relevant paragraph in **Ambuja Cement** is paragraph 20 and the same reads as follows:

'20. In *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.* this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.'

(iii) In this regard, this Court also deems it appropriate to write that Article 226 was amended by 42nd Amendment in 1976 (w.e.f. 01.02.1977) by inserting clause (3) which made alternative remedy a bar for exercise of jurisdiction under Article 226 but within 30 months by the 44th Amendment in 1978 (w.e.f. 01.08.1979), this clause (3) was deleted. This by itself makes it clear that alternative remedy is not a bar for the constitutional remedy under Article 226. In this regard, this Court deems it appropriate to write that there is a brief mention about this 42nd Amendment in **Ambuja Cement** adverted to supra, the relevant paragraph is paragraph 17 and the most relevant portion of paragraph 17 in this regard reads as follows:

‘17. We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution ...’

(iv) While on alternative remedy, it is deemed appropriate to write that learned counsel for said Bank relied on **CELIR LLP vs. Bafna Motors (Mumbai) Private Limited and Others** ('**CELIR-I**' for the sake of convenience) reported in **(2024) 2 SCC 1** and **CELIR LLP vs. Sumati Prasad Bafna and others** ('**CELIR-II**' also for the sake of convenience) reported in **2024 SCC OnLine SC 3727** for the propositions (a) interference by Court is not warranted unless the auction procedure is found to be collusive, fraudulent or vitiated and (b) equity cannot supplant law, respectively. This Court respectfully writes that **CELIR-I** and **CELIR-II** do not come to the aid of said Bank as they are clearly distinguishable on facts. In both these case laws, it is not a case of OTS. In this regard, this Court deems it appropriate to remind itself of the celebrated **Padma Sundara Rao** case law [**Padma Sundara Rao (Dead) and others Vs. State of Tamil Nadu and Others** reported in **(2002) 3 SCC 533**] wherein a Hon'ble Constitution Bench of the Supreme Court laid down the manner in which authorities and precedents cited should be referred to. To be noted **Padma Sundara Rao** was rendered by a Constitution Bench and therefore, this Court chooses to use the expression 'declaration of law' rather than 'ratio'. On facts, **Padma Sundara Rao** arose under Land Acquisition Act,

1894 and the question was, after the land acquisition proceedings are nullified, whether a fresh period will be available to the State for making a declaration under Section 6. In this fact setting, in **Padma Sundara Rao**, Hon'ble Supreme Court after reiterating what Lord Morris wrote in **Herrington vs. British Railways Board [(1972) 2 WLR 537]** held that there is always peril in treating the words of speech of judgments as legislative enactment and that the fact situation is of utmost importance with regard to placing reliance on case laws. Hon'ble Supreme Court is also very clear that circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. The relevant paragraph in **Padma Sundara Rao** is para 9 and the same reads as follows:

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board*. Circumstantial flexibility, one additional or different

fact may make a world of difference between conclusions in two cases'

(v) Following the declaration of law made in **Padma Sundara Rao**, this Court respectfully writes that **CELIR-I** and **CELIR-II** on facts are distinguishable and do not come to the aid of the said Bank as on facts they do not turn on OTS. Another case law relied on by learned counsel for said Bank is **Sanjay Sharma vs. Kotak Mahindra Bank Ltd. And others** reported in **2024 SCC OnLine SC 4589**. This is also for the principle that sale by way of public auction should not be set aside until there is any material irregularity or irregularity committed in holding that auction. **Sanjay Sharma** again is distinguishable on facts as it does not pertain to OTS. Learned counsel for said Bank also pressed into service **Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others** reported in **(2023) 2 SCC 805** for the proposition that borrower cannot claim OTS as a matter of right. Applying **Padma Sundara Rao** declaration of law made by Hon'ble Supreme Court, **Bijnor** also does not come to the aid of said Bank as **Bijnor** is a case where on facts the borrower was ineligible *qua* the conditions of OTS. In the case on hand, the

25.01.2018 OTS offer from said Bank makes it clear that the borrower is eligible for the special OTS. Therefore, it is not a case of borrower claiming OTS as a matter of right but it is a case of OTS having been offered to the borrower by said Bank, making it clear that borrower's account (NPA) is eligible, further making it clear, it is open till 31.03.2018 and thereafter turning topsy turvy and making a U-turn by advancing date, not being able to demonstrate that this communication was served on borrower, later contending that they sent two letters to borrower on same day (25.01.2018) one offering OTS and another saying that borrower has lost right of redemption and ultimately selling the immovable in public action to third party auction purchasers. Therefore, this court has no hesitation in writing that the instant case is clearly covered by more than one of the **Whirlpool** exceptions being a case of complete violation of procedural fairness which is a core pillar of principle of natural justice. To elaborate on this, to be noted, said Bank wrote two letters to the borrower on the same day, one offering OTS and saying borrower is eligible and further saying that borrower can pay the full and final settlement on or before 31.03.2018 and another letter saying that borrower

has lost his right of redemption. In this regard that a scanned reproduction of 25.01.2018 OTS letter is as follows:

69 ANNEXURE-III/5

Central Bank of India

BRANCH OFFICE: -

Annexure - III
(For RLD up to Rs. 10 Lakh to Rs. 100 Lakhs)

Date: 25 / 01 / 2018

To,
MS AND SONS (Prop: MR. TEJ SINGH)
SINGJAMB PARKING
SINGJAMB MAYENG LEKA

"Without Prejudice"

Reg: Your NPA loan account No. 3212974165 with our Branch, having Debit Balance Rs. 73 Lakhs with interest charged up to 25.01.2018 only

Dear Sir / Madam,

We are pleased to inform you that our Bank has come out with a special online settlement scheme which is valid up to 31.03.2018. Your account is also eligible under this scheme and after substantial concession, the minimum amount required to be deposited by you is Rs. 41,25,000/- as full and final settlement of your above mentioned NPA account.

You are advised to visit our Branch and settle your account by depositing the above mentioned amount in one stroke/single instalment.

Please note that the above offer is valid only up to 31.03.2018 under the above mentioned special concession scheme, as such you'll miss opportunity to get rid of your debt.

Failing to avail this offer within stipulated time i.e. latest by 31.03.2018, this offer will stand automatically lapsed and Bank will have right to recovery full dues with up to date interest.

With Regards,


(Branch Manager)

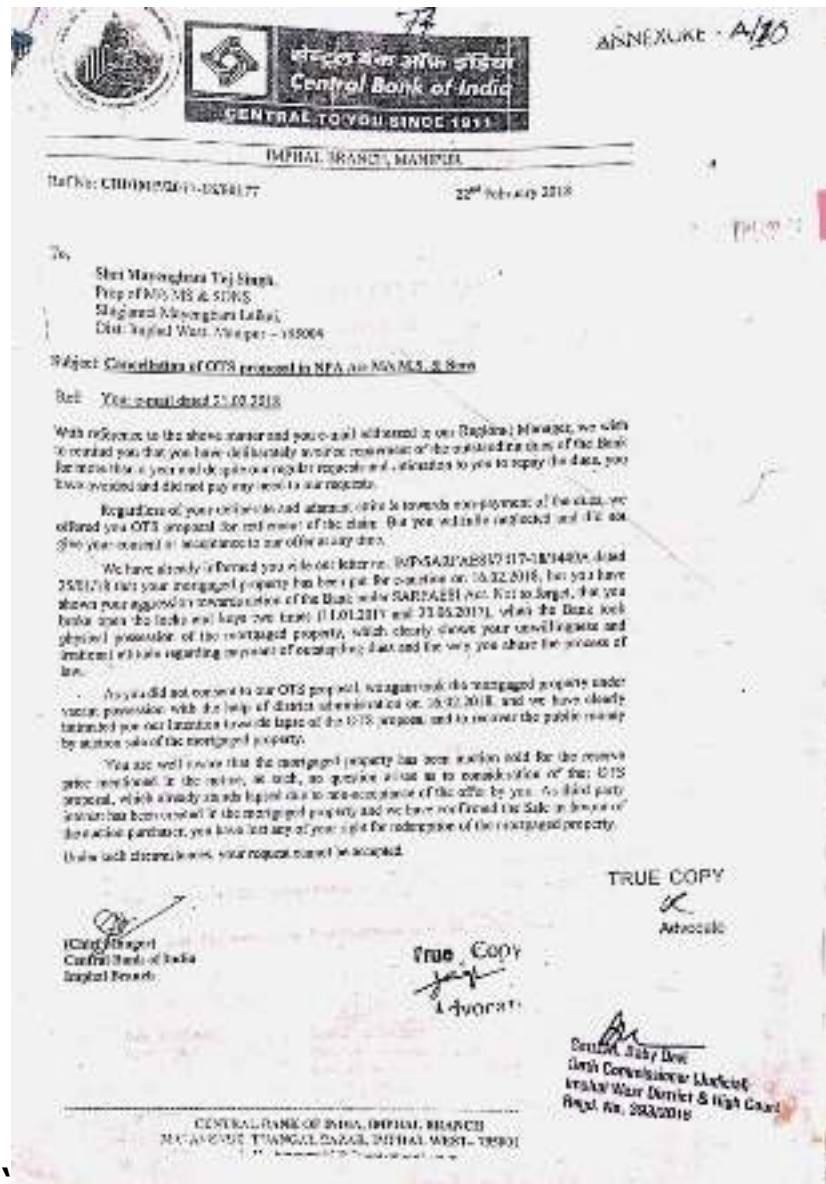
Name of Branch: Singjamb
Contract No: 3212974165

TRUE COPY
Scanned by CamScanner

Sd/- M. Babu Das
Bath District Officer (Judicial)
Muzrai West District & High Court
Bath, W.D. 581020

There is a reference to another letter on the same day, i.e., 25.01.2018 bearing letter no. IMP/SARFAESI/2017-18/1449A in said Bank's letter dated 22.02.2018 and

a scanned reproduction of this 22.02.2018 letter is as follows:



The 3rd paragraph in the above letter refers to another letter dated 25.01.2018 and for the sake of emphasis and ease of reference, the afore-referred 3rd paragraph

is set out infra in bold and the same is as follows:

'We have already informed you vide our letter no. IMP/SARFAESI/2017-18/1449A dated 25/01/18 that your mortgaged property has been put for e-auction on 16.02.2018, but you have shown your aggression towards action of the Bank under SARFAESI Act. Not to forget, that you broke open the locks and keys two times (11.01.2017 and 20.06.2017), when the Bank took physical possession of the mortgaged property, which clearly shows your unwillingness and irrational attitude regarding payment of outstanding dues and the way you abuse the process of law.'

[vi] This Court deems it appropriate to write that afore-referred conduct of said Bank besides being a clear case of violation of procedural fairness which is one of the core principles of natural justice, is also covered by another **Whirlpool** exception, viz., being proceedings wholly without jurisdiction as a Nationalized Bank after having offered a OTS to a borrower and holding that the OTS offer is valid till 31.03.2018 cannot on the same day write to the borrower that his right of redemption has been lost and subsequently contend that the cut-off date was advanced to 10.02.2018 that too without being able to demonstrate communication dated 29.01.2018 in this

regard was served on writ petitioner. To be noted, learned counsel for said Bank was unable to cite any provision of law, be it in the Reserve Bank of India Act, 1934 (2 of 1934) or for that matter in any other statute.

(vii) To complete the discussion on alternative remedy and comprehensively capture what transpired in the hearing, it is also appropriate to write that learned counsel for borrower pressed into service **PHR Invent Educational Society Vs. UCO Bank and Others** reported in **2024 INSC 297** to say that exception for petitions under Article 226 of the Constitution have been clearly laid down and one of the exceptions is when the statutory authority has not acted in accordance with the provisions of enactment in question, learned counsel for said Bank submitted that reference to statutory authority in **PHR Invent** is to the Tribunals i.e., DRT and the DRAT. To be noted in **PHR Invent**, Hon'ble Supreme Court has in paragraph 29 carved out 4 exceptions and in paragraph 33 has also reiterated **Satyawati Tondon** which we have referred to supra. Paragraphs 29 and 33 of **PHR Invent** read as follows:

'29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution

could be entertained in spite of availability of an alternative remedy. Some of them are thus:

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
- (ii) it has acted in defiance of the fundamental principles of judicial procedure;
- (iii) it has resorted to invoke the provisions which are repealed; and
- (iv) when an order has been passed in total violation of the principles of natural justice.

33. While dismissing the writ petition, we will have to remind the High Courts of the following words of this Court in the case of **Satyawati Tondon** (supra) since we have come across various matters wherein the High Courts have been entertaining petitions arising out of the DRT Act and the SARFAESI Act in spite of availability of an effective alternative remedy:

"55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

It is necessary to make it clear that **PHR Invent** is also a case which does not turn on OTS. Therefore, this Court deems it appropriate to write that for the purpose of the legal drill at hand, it will suffice to respectfully follow the principle laid down by Hon'ble Supreme Court that alternative remedy Rule is not an

absolute Rule and it is a Rule of discretion and respectfully follows Whirlpool principle about which discussion and dispositive reasoning of this Court has been set out/alluded to supra in this order, it is a self-imposed restraint. Be that as it may another buttressing factor in this regard is, in the case on hand, the borrower has approached the DRT Guwahati and has made a positive averment in this regard in the WP in paragraph 13 which reads as follows:

'13. That, the petitioner had also approached the DRT, Guwahati also as per the statement/submission made in para No.20 in the affidavit-in-opposition in W.P.(C) No. 173 of 2017 by the Respondent Bank but the Registry of the Debt Recovery Tribunal, Guwahati situated at B. Baruah Road Apsara Building, Ulubari, Guwahati informed the petitioner that the Debt Recovery Tribunal, Guwahati has no jurisdiction to entertain the application of the petitioner and hence did not register it.'

(viii) This Court had mentioned in the earlier part of this order that there will be more allusion about the letter dated 29.01.2018 by which the said Bank contends that it had advanced the cut-off date qua special OTS from 31.03.2018 to 10.02.2018. In this regard, the Hon'ble Single Bench called for an affidavit from said Bank and an affidavit was filed by the Chief Manager of said Bank.

In this affidavit, the Chief Manager in paragraphs 3 & 4 of the affidavit has averred as follows:

'3. That, in the meantime, One Rajesh Kumar, Chief Manager, Central Bank of India, Zonal Office, came to Imphal. In the afternoon of 25-01-2018, I along with, Rajesh Kumar, R.M. and Okram Raju Singh, Recovery Agent, SMART to circulate/hand over the above-mention Notice/Letter to loan defaulters including Mayengbam Tej Singh. Mayengbam Tej Singh was found in the vicinity of the land mortgaged with the Central bank. I have personally handed the letter to Mayengbam Tej Singh and request to acknowledge received. But, Mayengbam Tej Singh refused to acknowledge receipt:

4. That, in the morning of 29-01-2018, I have received instructions from the Zonal office that since the date of E-auction has been fixed on 16-02-2018, the last date of OTS fixed on 31-03-2018 be changed to 10-02-2018 and to intimate to Mayengbam Tej Singh. I have prepared a letter No. CBI/IMP/RECV/2017-18/00152 A dated 29-01-2018 making necessary changes as per instructions of the Zonal Office. I along with Okram Raju went to deliver the letter in the evening of 29-01-2018. Mayengbam Tej Singh was found near the mortgaged land and handed over the letter to him and requested to acknowledge receipt. Mayengbam Tej Singh reluctantly took the letter but declined to acknowledge receipt.'

The Hon'ble Single Bench has disbelieved the above version making it clear that it is not entering upon any disputed facts in a writ petition. The Hon'ble Single Bench has made it clear in the impugned order that when the said Bank contends that 29.01.2018 letter has been served on the borrower and the borrower submits that he has not received any such letter, the onus lies on the said Bank to prima facie demonstrate that the letter was delivered to the borrower rather than making mere assertions. In the light of inconsistencies, after also noticing that it is rather strange that the Chief Manager had gone to the borrower's place, Hon'ble Single Bench has not accepted the mere assertion of said Bank which is not supported by any prima facie material qua service/acknowledgment. This Court therefore finds that there is no reason to interfere with this reasoning of the Hon'ble Single Bench. The most relevant paragraph in this regard is paragraph 10 of the impugned order and the same reads as follows:

'[10] In the present case, this Court would have been satisfied if the corroborating affidavit of the person, namely, Okram Raju, had been also enclosed to show that the Bank had delivered the letter dated 29.01.2018 to the petitioner. Secondly, it is quite unusual that the Chief Manager himself

would go to a loanee to deliver a letter which is normally done either by registered post or some other modes of communication, which is generally resorted to by the Bank authorities. Therefore, this Court is of the view that the claim made by the Bank that the said letter dated 29.1.2018 had been delivered to the petitioner, falls short of the proof required and accordingly, this Court is not inclined to accept the plea of the Bank. If that is so, this Court would hold that the letter dated 29.1.2018 had not been delivered to the petitioner. In that event, the subsequent proceeding including e-auctioning initiated by the bank authorities cannot be said to be valid. In that view of the matter, this Court holds that the e-auction held by the bank authorities was illegal and was done by changing the rules of the game as mentioned above.'

We wholly agree with the Hon'ble Single Bench and we have no hesitation in writing that there is no reason to interfere with the order the Hon'ble Single Bench. Learned counsel for said Bank submitted that after the SARFAESI Act regime, the Chief Manager do go to the borrower's place for service but we deem it appropriate to not dilate upon the same owing to the averments in paragraph 3 & 4 of the affidavit of Chief Manager.

(ix) As regards the submission of learned senior counsel that the auction purchasers have been left high and dry as they availed financial assistance for

purchasing the auctioned property in public auction, have also put up superstructures there but the auctioned purchasers' account has now become NPA, this Court deems it appropriate to write that the remedy of the auction purchasers will only be against the said Bank and all questions in this regard are left open. In this regard, it is also deemed appropriate to write that this Bench has noticed that the Hon'ble Single Bench has also given a direction to said Bank to refund the money to the auction purchasers which is vide paragraph 13 of the impugned order which reads as follows:

'[13] In view of the above, this Court holds that the petitioner has been able to make out a case in his favour and e-auction which was held on 16.02.2018 is declared illegal as the petitioner was denied the opportunity to clear his debt as mentioned above and the natural consequence is that if the petitioner is still willing to clear the debt, he will be entitled to regain possession of the said mortgaged property from the Bank on payment of the due amount within a period of 2 (two) months from today. The private respondent Nos. 3 & 4, who had purchased the mortgaged property have to return the mortgaged land to the Bank and would be entitled to be refunded of the purchased price from the Bank paid, to the Bank including any incidental charges as they cannot derive any benefit out of an illegal transaction.'

This, in the considered opinion of this Court, douses the argument of the auctioned purchasers that they have been left high and dry.

(x) Learned counsel for borrower placed reliance on 'the Security Interest (Enforcement) Rules 2002' ('said Rules' for the sake of convenience and clarity) {which is a piece of subordinate legislation made by Central Government in exercise of Rule making powers vide Section 38 of the SARFAESI Act}, to say that adequate 30 days public notice for the auction was not given. Learned counsel relied on Rules 8(6) and Rule 9(1). Learned counsel for said Bank refuted the submission by saying that this will not apply to subsequent auctions. This Court deems it appropriate to not to dilate on this as the case at hand turns on OTS. Therefore, we also deem it appropriate not to dilate on **Rajiv Subramaniyan** case [**J. Rajiv Subramaniyan and another. Vs. Pandiyas and others**] reported in **(2014) 5 SCC 651** relied on by learned counsel for borrower which turns on Rules 8 and 9 of said Rules. To be noted, the Hon'ble Single Bench has not gone into the question of auction or the procedure followed for the auction but the crux and gravamen of the legal drill

turned on OTS being offered to borrower and contending that cut-off date was altered and alteration of date was communicated to the borrower which has been disbelieved by the Hon'ble Single Bench as no prima facie material qua service/acknowledgment was placed before it on the teeth of borrower contending that the communication was not received by him.

[9] This takes this Court to the captioned MC. The captioned MC has been filed on 06.12.2018, post impugned order, pending captioned WAs. To be noted, W.A. No. 52 of 2018 filed by auction purchasers was filed on 12.11.2018 and W.A. No. 61 of 2018 filed by said Bank has been filed on 27.11.2018. In captioned MC, the borrower has made a prayer to permit deposit of the special OTS amount of Rs. 41,25,000/- (Rupees Forty One Lakh and Twenty Five Thousand) by way of a cheque a photocopy of which has been annexed to the MC. In this regard, there was a contention by the learned counsel for said Bank that in and vide the impugned order, there is a direction for payment of 'outstanding dues' within two months. This Court finds that the writ petition has been filed on 22.03.2018 in this Court well before the cut-off date of 31.03.2018 and as already alluded to supra, the order of the Hon'ble Single Bench has been stayed by way of an interim stay and the same is operating. In any event, the communication dated 22.02.2018 from the said Bank stating that the right of redemption has been lost about which there is allusion

supra has been set aside vide the impugned order. Impugned order has to be understood in sum totality of all these facts. Therefore, we deem it appropriate to dispose of the captioned MC as closed leaving it open to the parties to abide the impugned order which we are confirming.

[10] The impugned order is sustained.

[11] Ergo, the sequitur in the light of the narrative, discussion and dispositive reasoning set out supra is, both captioned WAs fail and the same are dismissed. As regards the captioned MC, the same is disposed of as closed. Consequently, the afore-referred interim order staying the operation of Hon'ble Single Bench order now operating is vacated. There shall be no order as to costs.

JUDGE

CHIEF JUSTICE

FR/NFR

John Kom/Sandeep

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