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Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.3589 OF 2023

High Court Bar Association, Allahabad ... Appellant

versus

State of U.P. & Ors. ... Respondents

with

Special Leave Petition (Crl.) nos.13284-13289 of 2023

and

Criminal Appeal..Diary no. 49052 of 2023

J U D G M E N T

ABHAY S. OKA, J.

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A. FACTUAL BACKGROUND

By the order dated 1st December 2023, a Bench of three Hon'ble Judges of this Court expressed a view that a decision of this Court in the case of ***Asian Resurfacing of Road Agency Private Limited & Anr. v. Central Bureau of Investigation***[1] requires reconsideration by a larger Bench.

I. Directions in Asian Resurfacing

1. In ***Asian Resurfacing***[1], this Court dealt with the scope of interference by the High Court with an order of framing charge passed by the Special Judge under the provisions of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). The

[1] (2018) 16 SCC 299

issue was whether an order of framing charge was an interlocutory order. The High Court held that an order of framing charge under the PC Act was interlocutory. A Bench of two Hon'ble Judges of this Court, by the order dated 9th September 2013, referred the case to a larger Bench to consider the issue of whether the case of ***Mohan Lal Magan Lal Thacker v. State of Gujarat***[2] was correctly decided. A Bench of three Hon'ble Judges held that the order of framing charge was neither an interlocutory nor a final order. Therefore, it was held that the High Court has jurisdiction in appropriate cases to consider a challenge to an order of framing charge. Furthermore, the High Court has jurisdiction to grant a stay of the trial proceedings. Thereafter, it proceeded to consider in which cases a stay of the proceedings ought to be granted. The Bench considered the question in the context of a criminal trial, particularly under the PC Act. In paragraphs 30 and 31, the Bench observed thus:

> **"30.** It is well accepted that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be an incentive to delay. The

[2] AIR 1968 SC 733

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> order granting stay must show application of mind. The power to grant stay is coupled with accountability. [*Siliguri Municipality* v. *Amalendu Das*, (1984) 2 SCC 436, para 4 : 1984 SCC (Tax) 133; *CCE* v. *Dunlop India Ltd.*, (1985) 1 SCC 260, para 5 : 1985 SCC (Tax) 75; *State (UT of Pondicherry)* v. *P.V. Suresh*, (1994) 2 SCC 70, para 15 and *State of W.B.* v. *Calcutta Hardware Stores*, (1986) 2 SCC 203, para 5]
>
> **31. Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned, and concluded within two-three months."**
>
> **(Emphasis added)**

2. We have been called upon to decide the correctness of the view taken in paragraphs 36 and 37 of the said decision, which read thus:

> **"36.** In view of the above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this situation, **we consider it appropriate to direct that**

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in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalised. The trial court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter. **Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that**

> **stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated.** Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.**"**
>
> **(Emphasis added)**

3. A Miscellaneous Application was filed in the decided case, in light of the order passed on 4th December 2019 by the Learned Additional Chief Judicial Magistrate, Pune. When the learned Magistrate was called upon to proceed with the trial on the ground of automatic vacation of stay after the expiry of a period of six months, the learned Magistrate expressed a view that when the jurisdictional High Court had passed an order of

stay, a Court subordinate to the High Court cannot pass any order contrary to the order of stay. By the order dated 15th October 2020, this Court held that when the stay granted by the High Court automatically expires, unless an extension is granted for good reasons, the Trial Court, on expiry of a period of six months, must set a date for trial and go ahead with the same. Later, an attempt was made to seek clarification of the law laid down in the case of ***Asian Resurfacing***[1]. This Court, by the order dated 25th April 2022, did not apply the direction issued in ***Asian Resurfacing***[1] to the facts of the case before it. An attempt was made to apply the directions to an order of stay of the order of the learned Single Judge of the High Court passed by a Division Bench in a Letters Patent Appeal.

II. Order of reference to Larger Bench

4. In the order of reference dated 1st December 2023, in paragraph 10, this Court observed thus:

> **"10.** We have reservations in regard to the correctness of the broad formulations of principle in the above terms. There can be no gainsaying the fact that a stay of an indefinite nature results in prolonging civil or criminal proceedings, as the case may be, unduly. At the same time, it needs to be factored in that the delay is not always on account of conduct of the parties involved. The delay may also be occasioned by the inability of the Court to take up proceedings expeditiously. **The principle which has been laid down in the above decision to the effect that the stay shall automatically stand vacated (which**

> **would mean an automatic vacation of stay without application of judicial mind to whether the stay should or should not be extended further) is liable to result in a serious miscarriage of justice.”**
>
> **(Emphasis added)**

5. We are called upon to decide the following questions: -

(a) Whether this Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can order automatic vacation of all interim orders of the High Courts of staying proceedings of Civil and Criminal cases on the expiry of a certain period?

(b) Whether this Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can direct the High Courts to decide pending cases in which interim orders of stay of proceedings has been granted on a day-to-day basis and within a fixed period?

B. SUBMISSIONS

6. The main submissions were canvassed by Shri Rakesh Dwivedi, the learned senior counsel appearing on behalf of the appellant in Criminal Appeal no.3589 of 2023. We are summarising the submissions of Shri Rakesh Dwivedi as follows:

a. Automatic Vacation of the interim order is in the nature of judicial legislation. This Court cannot engage in judicial legislation;

b. Article 226 is a part of the basic structure of the Constitution of India, and it can neither be shut out nor whittled down by the exercise of powers under Articles 141 and 142;

c. The High Court is also a constitutional Court which is not judicially subordinate to this Court;

d. An order granting interim relief cannot be passed without an application of judicial mind. Application of mind is a pre-requisite of judicial decision making. The absence of application of mind would render a decision arbitrary. Similarly, an order vacating interim relief cannot be passed without the application of judicial mind;

e. If an interim order is to be passed, it should be initially for a short period so that there is an effective opportunity for the respondent to contest the same;

f. Two Constitution Benches in the cases of ***Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr.***[3] and ***P. Ramachandra Rao v. State of Karnataka***[4] held that it is not permissible for this Court to fix the time limit for completion of a trial;

[3] (1992) 1 SCC 225
[4] (2002) 4 SCC 578

g. No such directions could have been issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

h. Even under Article 226 (3) of the Constitution, an interim order cannot be automatically vacated unless a specific application is made for vacating the interim order;

i. A provision of automatic vacation of the Appellate Tribunal's stay order was incorporated in Section 254 (2A) of the Income Tax Act, 1961 (for short, 'the IT Act'). It provided that if an appeal preferred before the Appellate Tribunal was not disposed of within 365 days, the stay shall stand vacated even if the delay in disposing of the appeal is not attributable to the assessee. This court struck down the provision in the case of ***Deputy Commissioner of Income Tax & Anr. v. Pepsi Foods Limited***[5] on the ground that it was manifestly arbitrary; and

j. The automatic vacation of interim relief is unjust, unfair and unreasonable.

7. Shri Tushar Mehta, the learned Solicitor General appearing for the State of Uttar Pradesh, supported the submissions of Shri Dwivedi. In addition, he submitted that:

[5] (2021) 7 SCC 413

a. As held by the Constitution Bench in the case of ***Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur***[6], laws of procedure are grounded in principles of natural justice, which require that no decision can be reached behind the back of a person and in his absence;

b. If the condition imposed by a provision of law to do a certain thing within a time frame is upon the institution and the consequences of that institution failing to comply with the condition are to fall upon someone who has no control over the institution, the provision of law will have to be construed as directory;

c. An interim relief order is always granted after considering the three factors: prima facie case, the balance of convenience and irreparable injury to the aggrieved party. Once a finding is recorded regarding the entitlement of the appellant/applicant to get the order of stay, the order does not become automatically bad on the ground that it has lived for six months; and

d. In the decision of this Court in ***Kailash v. Nanhku & Ors***[7], it has been held that the process of justice may be speeded up and hurried, but fairness, which

[6] AIR 1965 SC 895
[7] (2005) 4 SCC 480

is the basic element of justice, cannot be permitted to be buried. The discretion conferred upon the High Court cannot be taken away by exercising power under Article 142 of the Constitution of India.

8. Shri Gaurav Mehrotra, the learned counsel appearing for the applicant in I.A. no.252872 of 2023 in Criminal Appeal no.3589 of 2023, in addition to the aforesaid submissions, relied upon a decision of the Constitution Bench in the case of ***Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd. & Anr***[8], to contend that the Court should not decide any important question without there being a proper *lis*.

9. Shri Vijay Hansaria, the learned senior counsel appearing for the Gauhati High Court Bar Association, made the following submissions:

a. As regards the interpretation of clause (3) of Article 226 of the Constitution of India, various High Courts have taken different views on the issue of whether the provision for automatic vacation of stay is mandatory or directory. He urged that the provision will have to be held as a directory;

b. In ***Asian Resurfacing***[1], the Court was dealing with a petition filed in the High Court arising from a prosecution under the PC Act. The cases of other

[8] (1983) 1 SCC 147

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categories were not the subject matter of challenge before this Court;

c. The power under Article 142 of the Constitution of India can be exercised for doing complete justice in any case or matter pending before it. The issue of the duration of the order of stay did not arise in the case of ***Asian Resurfacing***[1]; and

d. A successful litigant whose application for stay is allowed by the High Court cannot be prejudiced only on the ground that the High Court does not hear the main case within six months for reasons beyond the control of the said litigant.

10. Shri Amit Pai, the learned counsel appearing for the appellant in one of the appeals, while adopting the submissions, relied upon a decision of this Court in the case of ***Deoraj v. State of Maharashtra & Ors.***[9] and contended that recourse is taken to the order of grant of interim relief as the conclusion of hearing on merits is likely to take some time. He submitted that the said object has not been considered in ***Asian Resurfacing***[1]. He urged that passing an interim order of stay is a judicial act. Therefore, such an order must be vacated only by a judicial act.

11. Prof (Dr) Pankaj K Phadnis, representing the intervenor – Abhinav Bharat Congress, has filed written submissions. He

[9] (2004) 4 SCC 697

has contended that he was not permitted to join the hearing through video conferencing. He has come out with the draft of Supreme Court Rules, 2024. His submissions, based on the draft, are entirely irrelevant.

C. ANALYSIS

12. We have no manner of doubt that the direction issued in paragraph 36 of ***Asian Resurfacing***[1] regarding automatic vacation of stay has been issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India. Even the direction in paragraph 37 of conducting day-to-day hearing has been issued in exercise of the same jurisdiction. The effect of the direction issued in paragraph 36 is that the interim order of stay granted in favour of a litigant stands vacated without even giving him an opportunity of being heard, though there may not be any default on his part.

I. Object of passing interim orders

13. Before we examine the questions, we need to advert to the object of passing orders of interim relief pending the final disposal of the main case. The reason is that the object of passing interim order has not been considered while deciding ***Asian Resurfacing***[1]**.** An order of interim relief is usually granted in the aid of the final relief sought in the case. An occasion for passing an order of stay of the proceedings normally arises when the High Court is dealing with a challenge to an interim or interlocutory order passed during the pendency of the main case before a trial or appellate Court. The High Court can grant relief of the stay of hearing of the main

proceedings on being satisfied that a prima facie case is made out and that the failure to stay the proceedings before the concerned Court in all probability may render the remedy adopted infructuous. When the High Court passes an interim order of stay, though the interim order may not expressly say so, the three factors, viz; prima facie case, irreparable loss, and balance of convenience, are always in the back of the judges' minds. Though interim orders of stay of proceedings cannot be routinely passed as a matter of course, it cannot be said that such orders can be passed only in exceptional cases. Nevertheless, the High Courts, while passing orders of stay in serious cases like the offences under the PC Act or serious offences against women and children, must be more cautious and circumspect. An occasion for passing an order of stay of proceeding arises as it is not possible for the High Court to take up the case for final hearing immediately. While entertaining a challenge to an order passed in a pending case, if the pending case is not stayed, the trial or the appellate Court may decide the pending case, rendering the remedy before the High Court ineffective. Such a situation often leads to the passing of an order of remand. In our legal system, which is facing a docket explosion, an order of remand should be made only as a last resort. The orders of remand not only result in more delays but also increase the cost of litigation. Therefore, to avoid the possibility of passing an order of remand, the grant of stay of proceedings is called for in many cases.

II. High Court's power to vacate or modify interim relief

14. When a High Court grants a stay of the proceedings while issuing notice without giving an opportunity of being heard to the contesting parties, it is not an interim order, but it is an ad-interim order of stay. It can be converted into an interim order of stay only after an opportunity of being heard is granted on the prayer for interim relief to all the parties to the proceedings. Ad-interim orders, by their very nature, should be of a limited duration. Therefore, such orders do not pose any problem.

15. The High Courts are always empowered to vacate or modify an order of interim relief passed after hearing the parties on the following, amongst other grounds: -

(a) If a litigant, after getting an order of stay, deliberately prolongs the proceedings either by seeking adjournments on unwarranted grounds or by remaining absent when the main case in which interim relief is granted is called out for hearing before the High Court with the object of taking undue advantage of the order of stay;

(b) The High Court finds that the order of interim relief is granted as a result of either suppression or misrepresentation of material facts by the party in whose favour the interim order of stay has been made; and

(c) The High Court finds that there is a material change in circumstances requiring interference with the interim order passed earlier. In a given case, a long passage of

time may bring about a material change in circumstances.

These grounds are not exhaustive. There can be other valid grounds for vacating an order of stay.

III. Whether an Interim Order can come to an end automatically only due to the lapse of time

16. Interim order of stay can come to an end: -

(a) By disposal of the main case by the High Court, in which the interim order has been passed. The disposal can be either on merits or for default or other reasons such as the abatement of the case; or

(b) by a judicial order vacating interim relief, passed after hearing the contesting parties on the available grounds, some of which we have already referred to by way of illustration.

Elementary principles of natural justice, which are well recognised in our jurisprudence, mandate that an order of vacating interim relief or modification of the interim relief is passed only after hearing all the affected parties. An order of vacating interim relief passed without hearing the beneficiary of the order is against the basic tenets of justice. Application of mind is an essential part of any decision-making process. Therefore, without application of mind, an order of interim stay cannot be vacated only on the ground of lapse of time when the litigant is not responsible for the delay. An interim order lawfully passed by a Court after hearing all contesting parties is not rendered illegal only due to the long passage of time.

Moreover, the directions issued in ***Asian Resurfacing***[1] regarding automatic vacation of interim orders of stay passed by all High Courts are applicable, irrespective of the merits of individual cases. If a High Court concludes after hearing all the concerned parties that a case was made out for the grant of stay of proceedings of a civil or criminal case, the order of stay cannot stand automatically set aside on expiry of the period of six months only on the ground that the High Court could not hear the main case. If such an approach is adopted, it will be completely contrary to the concept of fairness. If an interim order is automatically vacated without any fault on the part of the litigant only because the High Court cannot hear the main case, the maxim *"actus curiae neminem gravabit"* will apply. No litigant should be allowed to suffer due to the fault of the Court. If that happens, it is the bounden duty of the Court to rectify its mistake.

17. In the subsequent clarification in the case of ***Asian Resurfacing***[1], a direction has been issued to the Trial Courts to immediately fix a date for hearing after the expiry of the period of six months without waiting for any formal order of vacating stay passed by the High Court. This gives an unfair advantage to the respondent in the case before the High Court. Moreover, it adversely affects a litigant's right to the remedies under Articles 226 and 227 of the Constitution of India. Such orders virtually defeat the right of a litigant to seek and avail of statutory remedies such as revisions, appeals, and applications under Section 482 of the Code of Criminal Procedure, 1973 (for

short, 'Cr. PC') as well as the remedies under the Code of Civil Procedure, 1908 (for short, 'CPC'). All interim orders of stay passed by all High Courts cannot be set at naught by a stroke of pen only on the ground of lapse of time.

18. The legislature attempted to provide for an automatic vacation of stay granted by the Income Tax Appellate Tribunal by introducing the third proviso to Section 254 (2A) of the IT Act. It provided that if an appeal in which the stay was granted was not heard within a period of 365 days, it would amount to the automatic vacation of stay. In the case of ***Pepsi Foods Limited***[5], this Court held that a provision automatically vacating a stay was manifestly arbitrary and, therefore, violative of Article 14 of the Constitution of India. Paragraphs 20 and 22 of the said decision read thus:

> **"20. Judged by both these parameters, there can be no doubt that the third proviso to Section 254(2-A) of the Income Tax Act, introduced by the Finance Act, 2008, would be both arbitrary and discriminatory and, therefore, liable to be struck down as offending Article 14 of the Constitution of India. First and foremost, as has correctly been held in the impugned judgment, unequals are treated equally in that no differentiation is made by the third proviso between the assessees who are responsible for delaying the proceedings and assessees who are not so responsible.** This is a little peculiar in that the legislature itself has made the aforesaid differentiation in the second proviso to Section 254(2-A) of the

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Income Tax Act, making it clear that a stay order may be extended up to a period of 365 days upon satisfaction that the delay in disposing of the appeal is not attributable to the assessee. We have already seen as to how, as correctly held by *Narang Overseas* [*Narang Overseas (P) Ltd.* v. *Income Tax Appellate Tribunal*, 2007 SCC OnLine Bom 671 : (2007) 295 ITR 22] , the second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to Section 254(2-A) of the Income Tax Act in its previous *avatar*. Ordinarily, the Appellate Tribunal, *where possible*, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay of the impugned order before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the said period is concerned, this condition becomes mandatory so far as the assessee is concerned."

21. .. ..

22. Since the object of the third proviso to Section 254(2-A) of the Income Tax Act is the automatic vacation of a stay that has been granted on the completion of 365 days, whether or not the assessee is responsible for the delay caused in hearing the appeal, such object being itself discriminatory, in the sense pointed out above, is liable to be struck down as violating Article 14 of

> **the Constitution of India. Also, the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, the vacation of stay in favour of the Revenue would ensue even if the Revenue is itself responsible for the delay in hearing the appeal. In this sense, the said proviso is also manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.**"
>
> **(Emphasis added)**

Therefore, even if the legislature were to come out with such a provision for automatic vacation of stay, the same may not stand judicial scrutiny as it may suffer from manifest arbitrariness.

IV. Scope of exercise of powers under Article 142 of the Constitution

19. The directions issued in ***Asian Resurfacing***[1] are obviously issued in the exercise of jurisdiction of this Court under Article 142 of the Constitution, which confers jurisdiction on this Court to pass such a decree or make such order necessary for doing complete justice in any case or matter pending before it. In ***Asian Resurfacing***[1], the first issue was, whether an order framing of charge in a case under the PC Act was in the nature of an interlocutory order. The second question was of the scope of powers of the High Court to stay proceedings of the trial under the PC Act while entertaining a

challenge to an order of framing charge. The question regarding the duration of the interim orders passed by the High Courts in various other proceedings did not specifically arise for consideration in the case of ***Asian Resurfacing***[1]. The provisions of Article 142 of the Constitution of India are meant to further the cause of justice and to secure complete justice. The directions in the exercise of power under Article 142 cannot be issued to defeat justice. The jurisdiction under Article 142 cannot be invoked to pass blanket orders setting at naught a very large number of interim orders lawfully passed by all the High Courts, and that too, without hearing the contesting parties. The jurisdiction under Article 142 can be invoked only to deal with extraordinary situations for doing complete justice between the parties before the Court.

20. While dealing with the scope of power under Article 142, a Constitution Bench of this Court in the case of ***Prem Chand Garg & Anr. v. The Excise Commissioner, U.P. and Ors.***[10]**,** in paragraphs 12 and 13 held thus:

> **"12.** Basing himself on this decision, the Solicitor-General argues that the power conferred on this Court under Article 142(1) is comparable to the privileges claimed by the members of the State Legislatures under the latter part of Article 194(3), and so, there can be no question of striking down an order passed by this Court under Article 142(1) on the ground that it is inconsistent with Article 32. It would be noticed that this argument proceeds on the basis that the

[10] 1962 SCC Online SC 37

order for security infringes the fundamental right guaranteed by Article 32 and it suggests that under Article 142(1) this Court has jurisdiction to pass such an order. In our opinion, the argument thus presented is misconceived. In this connection, it is necessary to appreciate the actual decision in the case of *Sharma* [(1959) 1 SCR 806 at 859-860] and its effect. The actual decision was that the rights claimable under the latter part of Article 194(3) were not subject to Article 19(1)(*a*), because the said rights had been expressly provided for by a constitutional provision viz. Article 194(3), and it would be impossible to hold that one part of the Constitution is inconsistent with another part. The position would, however, be entirely different if the State Legislature was to pass a law in regard to the privileges of its members. Such a law would obviously have to be consistent with Article 19(1)(*a*). If any of the provisions of such a law were to contravene any of the fundamental rights guaranteed by Part III, they would be struck down as being unconstitutional. Similarly, there can be no doubt that if in respect of petitions under Article 32 a law is made by Parliament as contemplated by Article 145(1), and such a law, in substance, corresponds to the provisions of Order 25 Rule 1 or Order 41 Rule 10, it would be struck down on the ground that it purports to restrict the fundamental right guaranteed by Article 32. The position of an order made either under the rules framed by this Court or under the jurisdiction of this Court under Article 142(1) can be no different. If this aspect of the matter is borne in mind, there would

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be no difficulty in rejecting the Solicitor-General's argument based on Article 142(1). **The powers of this Court are no doubt very wide and they are intended to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws.** Therefore, we do not think it would be possible to hold that Article 142(1) confers upon this Court powers which can contravene the provisions of Article 32.

13. In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. **It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties**."

(Emphasis added)

21. Another Constitution Bench in the case of ***Supreme Court Bar Association v. Union of India & Anr.***[11], in paragraphs 47 and 48, held thus:

> **"47.** The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are *complementary* to those powers which are *specifically conferred on the Court by various statutes though are not limited by those statutes*. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of *supplementary* powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, *to prevent injustice* in the process of litigation and *to do complete justice between the parties*. **This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary *whenever it is just and equitable to do so* and in particular to ensure the observance of the due process of law, *to do complete justice between the parties*, while administering justice according to law.** There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to

[11] (1998) 4 SCC 409

prevent "clogging or obstruction of the stream of justice". **It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it.** This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. **Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.** Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available *only* to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., *to do complete justice between the parties*. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is *necessary for doing complete justice* "between the parties in any

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> **cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" *in a cause or matter before it.*** Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" (see *K. Veeraswami* v. *Union of India* [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject."
>
> **(Emphasis added)**

22. It is very difficult to exhaustively lay down the parameters for the exercise of powers under Article 142 of the Constitution of India due to the very nature of such powers.

However, a few important parameters which are relevant to the issues involved in the reference are as follows:-

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants; and

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. This is because, while exercising the jurisdiction under Article 142, this Court may not be bound by procedural requirements of law. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right.

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

V. Position of the High Courts and its power of superintendence

23. A High Court is also a constitutional Court. It is well settled that it is not judicially subordinate to this Court. In the case of ***Tirupati Balaji Developers (P) Ltd. & Ors. v. State of Bihar & Ors.***[12], this Court has explained the position of the High Courts vis-à-vis this Court. In paragraph 8, this Court observed thus:

> **"8. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts, both are courts of record. The High Court is not a court "subordinate" to the Supreme Court.** In a way the canvas of judicial powers vesting in the High Court is wider inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by Part III of the Constitution and *for any other purpose* while the original jurisdiction of the Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential elections or inter-State disputes which the Constitution does not envisage being heard and determined by High Courts. **The High Court exercises power of superintendence under Article 227 of the Constitution over all subordinate courts and tribunals; the Supreme Court has not been conferred with any power of superintendence. If the Supreme Court and the High Courts**

[12] (2004) 5 SCC 1

> **both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother.** There are a few provisions which give an edge, and assign a superior place in the hierarchy, to the Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal. It is the final interpreter of the law. Under Article 139-A, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141 the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Under Article 144 all authorities, civil and judicial, in the territory of India — and that would include High Courts as well — shall act in aid of the Supreme Court.**"**
>
> **(Emphasis added)**

A High Court is constitutionally independent of the Supreme Court of India and is not subordinate to this Court. This Court has dealt with the issue of jurisdiction of the High Courts in the case of ***L. Chandra Kumar v. Union of India & Ors***[13]**.** The relevant part of paragraph 78 and paragraph 79 read thus:

> **"78.** .. .. **We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this**

[13] (1997) 3 SCC 261

> **Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.**
>
> **79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution.** This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."
>
> **(Emphasis added)**

24. The power of the High Court under Article 227 of the Constitution to have judicial superintendence over all the Courts within its jurisdiction will include the power to stay the proceedings before such Courts. By a blanket direction in the exercise of power under Article 142 of the Constitution of India, this Court cannot interfere with the jurisdiction conferred on the High Court of granting interim relief by limiting its jurisdiction to pass interim orders valid only for six months at a time. Putting such constraints on the power of the High Court will also amount to making a dent on the jurisdiction of the High Courts under Article 226 of the Constitution, which is an essential feature that forms part of the basic structure of the Constitution.

VI. Whether the Court should deal with an issue not arising for consideration

25. In the case of ***Sanjeev Coke Manufacturing Company,***[8] a Constitution Bench of this Court in paragraph 11 held thus:

> **"11.** ....We have serious reservations on the question whether it is open to a court to answer academic or hypothetical questions on such considerations, particularly so when serious constitutional issues are involved. **We (Judges) are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords. We think it is inexpedient for the Supreme Court to delve into problems which do not arise and express opinion thereon."**
>
> **(Emphasis added)**

In ***Asian Resurfacing***[1], there was no *lis* before this Court arising out of the orders of stay granted in different categories of cases pending before the various High Courts. This Court was dealing with a case under the PC Act. Thus, an attempt was made to delve into an issue which did not arise for consideration.

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VII. Clause (3) Of Article 226 of the Constitution

26. In this case, it is unnecessary for this Court to decide whether clause (3) of Article 226 of the Constitution of India is mandatory or directory. Clause (3) of Article 226 reads thus:

> **"226. Power of High Courts to issue certain writs:**
>
> (1) .. ..
>
> (2) .. ..
>
> (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—
>
> (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
>
> (b) giving such party an opportunity of being heard,
>
> makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the

> interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.**"**

On its plain reading, clause (3) is applicable only when an interim relief is granted without furnishing a copy of the writ petition along with supporting documents to the opposite party and without hearing the opposite party. Even assuming that clause (3) is not directory, it provides for an automatic vacation of interim relief only if the aggrieved party makes an application for vacating the interim relief and when the application for vacating stay is not heard within the time specified. Clause (3) will not apply when an interim order in a writ petition under Article 226 is passed after the service of a copy of the writ petition on all concerned parties and after giving them an opportunity of being heard. It applies only to *ex-parte* ad interim orders.

VIII. Directions issued by the constitutional Courts to decide pending cases in a time-bound manner

27. The net effect of the directions issued in paragraphs 36 and 37 of ***Asian Resurfacing***[1] is that the petition in which the High Court has granted a stay of the proceedings of the trial, must be decided within a maximum period of six months. If it is not decided within six months, the interim stay will be vacated automatically, virtually making the pending case infructuous. In fact, in paragraph 37, this Court directed that the challenge to the order of framing charge should be entertained in a rare case, and when the stay is granted, the

case should be decided by the High Court on a day-to-day basis so that the stay does not operate for an unduly long period.

28. The Constitution Benches of this Court have considered the issue of fixing timelines for the disposal of cases in the cases of ***Abdul Rehman Antulay***[3] and ***P. Ramachandra Rao***[4]. In the case of ***Abdul Rehman Antulay***[3], in paragraph 83, this Court held thus:

> **"83.** But then speedy trial or other expressions conveying the said concept — are necessarily relative in nature. One may ask — speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind. For example, take the very case in which Ranjan Dwivedi (petitioner in Writ Petition No. 268 of 1987) is the accused. 151 witnesses have been examined by the prosecution over a period of five years. Examination of some of the witnesses runs into more than 100 typed pages each. The oral evidence adduced by the prosecution so far runs into, we are told, 4000 pages. Even though, it was proposed to go on with the case five days of a week and week after week, it was not possible for various reasons viz., non-availability of the counsel, non-availability of accused, interlocutory proceedings and other systemic delays. A murder case may be a simple one involving say a dozen

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witnesses which can be concluded in a week while another case may involve a large number of witnesses, and may take several weeks. Some offences by their very nature e.g., conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition, acquisition of disproportionate assets by public servants, cases of corruption against high public servants and high public officials take longer time for investigation and trial. Then again, the workload in each court, district, region and State varies. This fact is too well known to merit illustration at our hands. In many places, requisite number of courts are not available. In some places, frequent strikes by members of the bar interferes with the work schedules. In short, it is not possible in the very nature of things and present-day circumstances to draw a time-limit beyond which a criminal proceeding will not be allowed to go. Even in the USA, the Supreme Court has refused to draw such a line. Except for the Patna Full Bench decision under appeal, no other decision of any High Court in this country taking such a view has been brought to our notice. Nor, to our knowledge, in United Kingdom. Wherever a complaint of infringement of right to speedy trial is made the court has to consider all the circumstances of the case including those mentioned above and arrive at a decision whether in fact the proceedings have been pending for an unjustifiably long period. In many cases, the accused may himself have been responsible for the delay. In such cases, he cannot be allowed to take advantage of his own wrong. In some cases, delays may occur for which

> neither the prosecution nor the accused can be blamed but the system itself. Such delays too cannot be treated as unjustifiable — broadly speaking. Of course, if it is a minor offence — not being an economic offence — and the delay is too long, not caused by the accused, different considerations may arise. Each case must be left to be decided on its own facts having regard to the principles enunciated hereinafter. **For all the above reasons, we are of the opinion that it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings.** It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory."
>
> **(Emphasis added)**

In paragraph 27 of the decision in the case of ***P. Ramachandra Rao***[4], this Court observed thus:

> **"27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution.** The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can

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> remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time-limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. **This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973."**
>
> **(Emphasis added)**

The principles laid down in the decision will apply even to civil cases before the trial courts. The same principles will also apply to a direction issued to the High Courts to decide cases on a day-to-day basis or within a specific time. Thus, the directions of the Court that provide for automatic vacation of the order of stay and the disposal of all cases in which a stay has been granted on a day-to-day basis virtually amount to judicial legislation. The jurisdiction of this Court cannot be exercised to make such a judicial legislation. Only the legislature can provide that cases of a particular category should be decided within a specific time. There are many statutes which incorporate such provisions. However, all such provisions are usually held to be directory.

29. Ideally, the cases in which the stay of proceedings of the civil/criminal trials is granted should be disposed of expeditiously by the High Courts. However, we do not live in an ideal world. A judicial notice will have to be taken of the fact that except High Courts of smaller strength having jurisdiction over smaller States, each High Court is flooded with petitions under Article 227 of the Constitution of India for challenging the interim orders passed in civil and criminal proceedings, the petitions under Section 482 of the Cr.PC for challenging the orders passed in the criminal proceedings and petitions filed in the exercise of revisional jurisdiction under the CPC and the Cr. PC. A judicial notice will have to be taken of the fact that in all the High Courts of larger strength having jurisdiction over larger States, the daily cause lists of individual Benches of the cases of the aforesaid categories are of more than a hundred matters. Therefore, once a case is entertained by the High Court and the stay is granted, the case has a long life.

30. There is a huge filing of regular appeals, both civil and criminal in High Courts. After all, the High Courts deal with many other important matters, such as criminal appeals against acquittal and conviction, bail petitions, writ petitions, and other proceedings that involve the issues of liberty under Article 21 of the Constitution of India. The High Courts deal with matrimonial disputes, old appeals against decrees of civil courts, and appeals against appellate decrees. There are cases where senior citizens or second or third-generation litigants are

parties. The High Courts cannot be expected to decide, on a priority basis or a day-to-day basis, only those cases in which a stay of proceedings has been granted while ignoring several other categories of cases that may require more priority to be given.

31. The situation in Trial and district Courts is even worse. In 2002, in the case of ***All India Judges' Association & Ors. v. Union of India & Ors.***[14], this Court passed an order directing that the judge-to-population ratio within twenty years should be 50 per million. Even as of today, we are not able to reach the ratio of even 25 per million. The directions issued in the case of ***Imtiyaz Ahmed v. State of Uttar Pradesh & Ors.***[15] have not been complied with by the States by increasing the Judge strength of the Trial and District Courts. The figures of pendency of cases in our trial Courts are staggering. There are different categories of cases which, by their very nature, are required to be given utmost priority, such as the cases of the accused in jail and the cases of senior citizens. For example, there are many legislations like the Hindu Marriage Act, 1955, the Protection of Women from Domestic Violence Act, 2005, the Negotiable Instruments Act, 1881 etc which prescribe specific time limits for the disposal of cases. However, due to the huge filing and pendency, our Courts cannot conclude the trials within the time provided by the statutes. There is a provision in the Code of Criminal Procedure, 1973, in the form of Section

[14] (2002) 4 SCC 247
[15] (2017) 3 SCC 658

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309, which requires criminal cases to be heard on a day-to-day basis once the recording of evidence commences. The same Section provides that in case of certain serious offences against women, the cases must be decided within two months of filing the charge sheet. Unfortunately, our Criminal Courts are not in a position to implement the said provision. Apart from dealing with huge arrears, our Trial Courts face the challenge of dealing with a large number of cases made time-bound by our constitutional Courts. Therefore, in the ordinary course, the constitutional Courts should not exercise the power to direct the disposal of a case before any District or Trial Court within a time span. In many cases, while rejecting a bail petition, a time limit is fixed for disposal of trial on the ground that the petitioner has undergone incarceration for a long time without realising that the concerned trial Court may have many pending cases where the accused are in jail for a longer period. The same logic will apply to the cases pending before the High Courts. When we exercise such power of directing High Courts to decide cases in a time-bound manner, we are not aware of the exact position of pendency of old cases in the said Courts, which require priority to be given. Bail petitions remain pending for a long time. There are appeals against conviction pending where the appellants have been denied bail.

32. Therefore, constitutional Courts should not normally fix a time-bound schedule for disposal of cases pending in any Court. The pattern of pendency of various categories of cases pending in every Court, including High Courts, is different. The

situation at the grassroots level is better known to the judges of the concerned Courts. Therefore, the issue of giving out-of-turn priority to certain cases should be best left to the concerned Courts. The orders fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations.

33. There is another important reason for adopting the said approach. Not every litigant can easily afford to file proceedings in the constitutional Courts. Those litigants who can afford to approach the constitutional Courts cannot be allowed to take undue advantage by getting an order directing out-of-turn disposal of their cases while all other litigants patiently wait in the queue for their turn to come. The Courts, superior in the judicial hierarchy, cannot interfere with the day-to-day functioning of the other Courts by directing that only certain cases should be decided out of turn within a time frame. In a sense, no Court of law is inferior to the other. This Court is not superior to the High Courts in the judicial hierarchy. Therefore, the Judges of the High Courts should be allowed to set their priorities on a rational basis. Thus, as far as setting the outer limit is concerned, it should be best left to the concerned Courts unless there are very extraordinary circumstances.

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IX. Procedure to be adopted by High Courts while passing interim order of stay of proceedings and for dealing with the applications for vacating interim stay

34. At the same time, we cannot ignore that once the High Court stays a trial, it takes a very long time for the High Court to decide the main case. To avoid any prejudice to the opposite parties, while granting *ex-parte* ad-interim relief without hearing the affected parties, the High Courts should normally grant ad-interim relief for a limited duration. After hearing the contesting parties, the Court may or may not confirm the earlier ad-interim order. Ad-interim relief, once granted, can be vacated or affirmed only after application of mind by the concerned Court. Hence, the Courts must give necessary priority to the hearing of the prayer for interim relief where ad-interim relief has been granted. Though the High Court is not expected to record detailed reasons while dealing with the prayer for the grant of stay or interim relief, the order must give sufficient indication of the application of mind to the relevant factors.

35. An interim order passed after hearing the contesting parties cannot be vacated by the High Court without giving sufficient opportunity of being heard to the party whose prayer for interim relief has been granted. Even if interim relief is granted after hearing both sides, as observed earlier, the aggrieved party is not precluded from applying for vacating the same on the available grounds. In such a case, the High Court must give necessary priority to the hearing of applications for vacating the stay, if the main case cannot be immediately taken

up for hearing. Applications for vacating interim reliefs cannot be kept pending for an inordinately long time. The High Courts cannot take recourse to the easy option of directing that the same should be heard along with the main case. The same principles will apply where ad-interim relief is granted. If an ad-interim order continues for a long time, the affected party can always apply for vacating ad-interim relief. The High Court is expected to take up even such applications on a priority basis. If an application for vacating *ex-parte* ad interim relief is filed on the ground of suppression of facts, the same must be taken up at the earliest.

D. CONCLUSIONS

36. Hence, with greatest respect to the Bench which decided the case, we are unable to concur with the directions issued in paragraphs 36 and 37 of the decision in the case of ***Asian Resurfacing***[1]. We hold that there cannot be automatic vacation of stay granted by the High Court. We do not approve the direction issued to decide all the cases in which an interim stay has been granted on a day-to-day basis within a time frame. We hold that such blanket directions cannot be issued in the exercise of the jurisdiction under Article 142 of the Constitution of India. We answer both the questions framed in paragraph 5 above in the negative.

37. Subject to what we have held earlier, we summarise our main conclusions as follows:

a. A direction that all the interim orders of stay of proceedings passed by every High Court

automatically expire only by reason of lapse of time cannot be issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

b. Important parameters for the exercise of the jurisdiction under Article 142 of the Constitution of India which are relevant for deciding the reference are as follows:

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants;

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before

it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right; and

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

c. Constitutional Courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the concerned Courts where the cases are pending; and

d. While dealing with the prayers for the grant of interim relief, the High Courts should take into consideration the guidelines incorporated in paragraphs 34 and 35 above.

38. We clarify that in the cases in which trials have been concluded as a result of the automatic vacation of stay based only on the decision in the case of ***Asian Resurfacing***[1], the orders of automatic vacation of stay shall remain valid.

39. The reference is answered accordingly. We direct the Registry to place the pending petitions before the appropriate Benches for expeditious disposal.

.....CJI.
[Dr Dhananjaya Y. Chandrachud]

.....J.
[Abhay S. Oka]

.....J.
[J. B. Pardiwala]

.....J.
[Manoj Misra]

New Delhi;
February 29, 2024.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3589 OF 2023

HIGH COURT BAR ASSOCIATION, ALLAHABAD **...APPELLANT(S)**

VERSUS

STATE OF U.P. & ORS. **...RESPONDENT(S)**

WITH
S.L.P. (Crl.) Nos. 13284-13289 of 2023
and
Criminal Appeal Diary No. 49052 of 2023

J U D G M E N T

PANKAJ MITHAL, J.

1. Concurring with the opinion expressed by my brother Justice Oka for himself and other puisne Judges, including the Hon'ble Chief Justice, I would like to add that in ***Asian Resurfacing of Road Agency Private Limited & Anr. vs. Central Bureau of Investigation***[1], this Court while deciding the issues arising therein went ahead in observing and directing that where a challenge to an order framing

[1] (2018) 16 SCC 299

charge is entertained and stay is granted, the matter must be decided on day to day basis so that the stay may not continue for an unduly long time. It was further observed that though no mandatory time limit may be fixed for deciding such a challenge, the stay order may not normally exceed two to three months or a maximum of six months unless it is extended by specific speaking order. Further directions were issued that in all pending matters before the High Court or other Courts relating to Prevention of Corruption Act or all other civil or criminal cases where stay is operating in pending trials, it will automatically lapse after six months unless a speaking order is passed extending the same. The Trial Court may, on expiry of the above period resume the proceedings without waiting for any intimation unless express order extending the stay is produced before the Court.

2. The above directions in ***Asian Resurfacing*** issued in exercise of power of doing complete justice under Article 142 of the Constitution of India are analogous to the constitutional provision as contained in clause (3) of Article

226 of the Constitution of India which has been inserted with effect from 1.8.1979 *vide* the Constitution (Forty-fourth Amendment) Act, 1978. It reads as under:

> "(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—
>
> (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and
>
> (b) giving such party an opportunity of being heard,
>
> makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated."

3. No doubt, the above provision is in respect to petitions filed before the High Court invoking the extraordinary

jurisdiction of the Court and is not meant to be applied specifically to other proceedings, nonetheless the principles behind the said provision can always be extended to other proceedings as has been done in ***Asian Resurfacing***. It is worth noting that wherever under a statute any such time limit has been prescribed or is fixed for deciding a particular nature of proceeding, it has been held to be directory in nature rather than mandatory. So appears to be the position with regard to the applicability of Article 226(3) of the Constitution of India.

4. It is well recognised that no one can be made to suffer on account of any mistake or fault of the Court which means that even delay on part of the Court in deciding the proceedings or any application therein would not be detrimental to any of the parties to the litigation much less to the party in whose favour an interim stay order is passed.

5. It is settled in law that grant of interim stay order ought to be ordinarily by a speaking order and therefore as a necessary corollary, a stay order once granted cannot be

vacated otherwise than by a speaking order, more so, when its extension also requires reasons to be recorded.

6. It is noticeable that under Article 226(3) of the Constitution of India, the automatic vacation of the stay order envisages making of an application to the High Court for the vacation of the interim stay order. Therefore, filing of an application for vacating the stay order is a *sine qua non* for triggering the automatic vacation of the stay order under Article 226(3) if such an application is not decided within the time prescribed of two weeks.

7. In other words, applying the above analogy or principle, the stay order granted in any proceedings would not automatically stand vacated on the expiry of a particular period until and unless an application to that effect has been filed by the other side and is decided following the principles of natural justice by a speaking order.

8. Sometimes, in quest of justice we end up doing injustice. ***Asian Resurfacing*** is a clear example of the same. Such a situation created ought to be avoided in the normal course or if at all it arises be remedied at the earliest. In doing so,

we have to adopt a practical and a more pragmatic approach rather than a technical one which may create more problems burdening the courts with superfluous or useless work. It is well said that useless work drives out the useful work. Accordingly, it is expedient in the interest of justice to provide that a reasoned stay order once granted in any civil or criminal proceedings, if not specified to be time bound, would remain in operation till the decision of the main matter or until and unless an application is moved for its vacation and a speaking order is passed adhering to the principles of natural justice either extending, modifying, varying or vacating the same.

9. The reference made to this Court is answered and disposed of accordingly.

..... J.
(PANKAJ MITHAL)

NEW DELHI;
FEBRUARY 29, 2024.