

**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.**