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18 March 2024

**A Constitution Bench Rules that there cannot be Automatic Vacation of Stay Orders of Trial Courts or High Courts**

A five-judge Bench of the Hon'ble Supreme Court ("Supreme Court") in High Court Bar Assn. v. State of U.P., 2024 SCC OnLine SC 207 ruled that there cannot be an automatic vacation of stay orders granted by a lower court or High Court in civil and criminal cases after six months. The Constitution Bench presided by Chief Justice D Y Chandrachud did not agree with the view expressed by a three Judge bench in Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299 ("Asian Resurfacing") that there should be an automatic vacation of a stay order of a lower court unless it is extended specifically.

### BRIEF BACKGROUND:

In Asian Resurfacing a three-judge bench took a view that in all matters pertaining to civil or criminal trial, an orders of stay would not continue beyond a period of six months unless specifically extended. Another three-judge Bench did not agree with the view expressed in Asian Resurfacing and hence the issue was referred to a five-judge Bench.

### The Supreme Court's analysis:

Setting aside the directions passed for automatic vacation of stay orders in Asian Resurfacing, the five-judge bench ruled that the Supreme Court and High Courts as constitutional courts should ordinarily refrain from fixing a deadline for disposal of cases pending before any other Courts.

The Court went on to hold that the jurisdiction under Article 142 of the Constitution of India cannot be exercised to nullify the benefits derived by a litigant based on judicial orders passed in their favour due to lapse of time. The Court further held that such blanket directions of automatic vacation of stay due to expiry of time cannot be issued in the exercise of the powers vested under Article 142 of the Constitution of India.

### The object of passing interim orders and an ad-interim order:

The Bench observed that the object of passing an interim order has not been considered in Asian Resurfacing. The Bench observed that 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 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.

### Issues involved:

#### **The bench framed two questions for adjudication in the case -**

1. The first issue was whether the Supreme Court, in the exercise of its jurisdiction under Article 142 of the Constitution, can direct automatic vacation of all interim orders of the High Courts to stay proceedings in civil and criminal cases on the expiry of a certain period.
2. The second issue was whether the Supreme Court can direct the High Courts to decide pending cases within a fixed time period, wherein interim orders have been granted staying the proceedings.

Answering the above questions in the 'negative', the Supreme Court held that the directions that provide for an automatic vacation of the order of stay and also the disposal of all cases in which a stay has been granted on a day-to-day basis virtually amounts to legislation, which is not within the domain of the Supreme Court. It is only for the legislature to provide for cases of a particular category to be decided within a specific time period. There are many statutes

which incorporate such provisions. However, all such provisions are usually held to be directory.

The Bench observed that Article 142 of the Constitution of India empowers the Supreme Court to pass 'any decree or order necessary for doing complete justice in any case or matter pending before it' across the country. The Bench also observed that the constitutional Courts should not normally fix a time-bound schedule for the disposal of cases pending in any Court. The pattern of pendency of various categories of cases pending in every Court, including a High Courts, is different. The situation at the grassroots level is better known to the judges of the concerned Courts.

Therefore, the Bench observed that the issue of giving out-of-turn priority to certain cases is best left to the concerned Courts. Directions fixing the outer limit for the disposal of cases should be passed only in exceptional circumstances to meet extraordinary situations.

The Bench observed that while exercising jurisdiction under Article 142 of the Constitution of India, the Supreme Court can always issue procedural directions to the Courts to streamline procedural aspects and iron out the creases in the procedural laws to ensure expeditious and timely disposal of cases. However, while doing so, the Bench held that the Supreme Court cannot affect the substantive rights of those litigants who are not parties to a case before it. The Court further said that the right to be heard before an adverse order is passed is not a matter of procedure but a substantive right.

The Bench held that 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.

## CONCLUSION AND COMMENT

The instant judgment of the five-judge bench provides much-required relief to the litigants. Once a litigant obtains an interim order effectively staying any civil or criminal trial upon satisfying a Court of Law, such litigant need not re-approach the court seeking an extension of such interim order, simply due to efflux of time.

The Bench rightly noted that courts often have different patterns when it comes to their pending caseload, and so the concerned court is best placed to decide which cases to prioritize. Hence, automatically vacating a stay order after six months would in fact "defeat justice" by nullifying interim orders that had been lawfully passed without hearing the parties. Also, the six-month time limit would amount to court-created legislation, which is impermissible as only the legislature has the power to decide if a category of cases should be decided within a specific amount of time.

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