

ITEM NO.19

COURT NO.1

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).3589/2023

HIGH COURT BAR ASSOCIATION ALLAHABAD

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(FOR ADMISSION and IA No.243194/2023-GRANT OF INTERIM RELIEF)

Date : 01-12-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Appellant(s)

Mr. Rakesh Dwivedi, Sr. Adv.
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Mr. Harmeet Singh Ruprah, Adv.
Mr. Abhinav Shrivastava, Adv.
Mr. Nikhil Sharma, Adv.
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Mr. Kumar Ayush, Adv.
Mr. Ronak Chaturvedi, Adv.
Mr. Archit Mandhyan, Adv.
Mr. Himanshu Tyagi, Adv.
Mr. Manu Yadav, Adv.
Mr. Prabhat Ranjan Raj, Adv.
Mr. Sidharth Sarthi, Adv.
Mr. Anil Kumar, Adv.
Mr. Gunjesh Ranjan, Adv.
Mr. Animesh Tripathi, Adv.
Mr. Anant Prakash, Adv.
Mr. Raman Yadav, Adv.
Mrs. Kanupriya Mishra, Adv.
Mr. Amit Kumar Singh, Adv.
Mr. Shaurya Vardhan Singh, Adv.
Mr. Salil Srivastava, Adv.

Mr. Ankit Dwivedi, Adv.
Mrs. Mukti Chowdhary, Adv.
Mr. Gyanendra Kumar, Adv.
Mrs. Vijaya Singh, Adv.
Mr. Shashwat Anand, Adv.
Mr. Shashank Shukla, Adv.
Mr. Ashutosh Thakur, Adv.
Mr. Rituvendra Singh, Adv.

For Respondent(s) Mr. Tanmaya Agarwal, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 Issue notice.
- 2 Mr Tanmaya Agarwal, Standing Counsel for the State of Uttar Pradesh, accepts notice and waives service.
- 3 We request either the Attorney General for India or the Solicitor General to assist this Court.
- 4 In **Asian Resurfacing of Road Agency (P) Ltd v CBI**¹, the following questions were framed by the Division Bench of the High Court, as recorded in paragraph 11 of the judgment of this Court:
 - “(a) Whether an order framing charge under the 1988 Act would be treated as an interlocutory order thereby barring the exercise of revisional power of this Court?
 - (b) Whether the language employed in Section 19 of the 1988 Act which bars the revision would also bar the exercise of power under Section 482 CrPC for all purposes?
 - (c) Whether the order framing charge can be assailed under Article 227 of the Constitution of India?”

5 In the course of the judgment, this Court observed that though the question referred relates to the issue whether an order framing charge is interlocutory, this Court was further considering the approach to be adopted by the High Court in dealing with a challenge to such an order. While answering the question, this Court held that the High Court has jurisdiction, in an appropriate case, to consider a challenge against an order framing a charge and to grant a stay. However, the Court then proceeded to analyse the manner in which an order of stay should be granted. The Court observed:

“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.”

6 This Court observed that if a stay is granted, it should not normally be unconditional or of an indefinite duration and appropriate conditions may be imposed so that the party in whose favour the stay is granted is accountable if the Court finally finds no merit in the matter. Having so observed, this Court held:

“34...Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.”

7 Then again, this Court held:

“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 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.”

8 This Court also held that:

“37...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...”

9 The above directions of this Court indicate that in all matters, civil or criminal, orders of stay which have once been granted should not continue beyond a period of six months unless specifically extended and the stay shall stand vacated automatically.

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.

- 11 Since the decision in **Asian Resurfacing of Road Agency (P) Ltd** (supra) is of a Bench of three Judges, we are of the considered opinion that it would be appropriate to have the matter referred to a larger Bench of five Judges.
- 12 The Registry shall take appropriate directions on the administrative side so that the correctness of the view can be reconsidered at an early date.

(SANJAY KUMAR-I)
DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR