

UPDATE

This Update has been prepared by Sanjeev Kaushik and Shreyas Awasthi

Law on interim orders: An Analysis of the judgement of the Hon'ble Supreme Court in High Court Bar Association, Allahabad v. State of Uttar Pradesh

A. Introduction

An interim injunction or relief is often referred to as the “strong arm of the courts of equity” as its origin can be traced to the equity Jurisprudence of England from which we have inherited the present system for the administration of law. Interim relief by its very nature operates in favour of one party against another, this raises one apparent question, what should be the validity period of such orders, if any and once such relief is granted when can it be vacated or modified? The Hon'ble Supreme Court while taking a strong view on the prolongation of criminal and civil trial due to the stay orders passed by the appellate court in *Asian Resurfacing of Road Agency Private Limited & Anr. v. Central Bureau of Investigation*¹ laid down that all the interim orders should be automatically vacated after the expiry of six months. By the said order the Supreme Court had essentially set aside many interim orders passed by various High Courts across the country without even allowing the parties a right to a hearing which has caused injustice to numerous litigants. The view of the Supreme Court was finally reconsidered in *High Court Bar Association, Allahabad v. State of Uttar Pradesh*² and the Constitution bench of the court overruled the decision in *Asian Resurfacing (supra)*. Our attempt in this piece is not only to decipher the principles of law as laid down by the Constitution bench in *High Court Bar Association, Allahabad (supra)* but also to assess its practical implication on pending and future litigations.

B. History of the case

The Supreme Court in *Asian Resurfacing (Supra)* was dealing with two core issues, *firstly*, whether an order of framing charge was an interlocutory order or final order and *secondly*, what is the scope of powers of the high court to stay proceedings of the trial under the Prevention of Corruption Act, 1988 (“PC Act”) while entertaining a challenge in SLP, to an order of framing charge. The Supreme Court apart from adjudicating on the aforementioned two issues also considered the issue of prolongation of trial owing to the stay orders passed by the appellate courts and directed that the duration of stay should not exceed six months unless extended by a specific order. The court thereafter directed that the stay granted by the High Courts would automatically lapse after six months unless extended by a reasoned order, and the concerned trial courts may resume proceedings after the stipulated period without further notice unless an explicit stay extension order is provided.

The said direction of the Supreme Court came for reconsideration in another case and on 1 December 2023, the three-judges bench of the court disagreed with the earlier view in *Asian Resurfacing (Supra)* and referred the matter to the constitution bench.

¹ [2018] 2 SCR 1045

² [2024] 2 S.C.R. 946

C. Findings of the Constitution Bench

1. There can be no automatic vacation of stay

i. Object of Passing Interim Orders

The constitution bench before delving into the questions at hand, explained the need to understand why interim orders are passed during the pendency of a case. It was observed that an order of interim relief is usually granted in the aid of the final relief sought in the case. 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 sought for 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. While such stays shouldn't be granted as a matter of routine, they needn't be exceptional either. However, caution is warranted in serious cases like those involving corruption or crimes against women and children. Stays are often necessary when the immediate resolution of the main case isn't feasible to prevent the need for remands, which only add to delays and costs in our already burdened legal system.

ii. High Court's Power to Vacate or Modify Interim Relief

High Courts possess the authority to vacate or alter interim orders, particularly when parties abuse the process of law, there's a change in circumstances, or if facts were misrepresented or suppressed by the party to garner a stay in their favour by prejudicing the court. These grounds aren't exhaustive, and there can be other valid reasons for vacating a stay. However, such actions must follow principles of natural justice and necessitate hearing all affected parties. Ad-interim orders, issued without hearing all parties, should have a limited duration and can be converted into interim orders only after affording all parties an opportunity to be heard.

iii. Automatic Termination of Interim Orders Due to Lapse of Time

Interim orders can terminate in two ways broadly: either through the disposal of the main case or through a judicial order vacating the interim relief after hearing all parties. Simply lapse of time is an insufficient ground for vacating a stay, especially if the delay isn't the litigant's fault. Orders must be reasoned and fair, considering individual cases on merits, rather than automatically applying a blanket law, which suspends the protection so granted by efflux of time. The approach should always align with the principles of fairness and natural justice.

The court relies on its decision in *Deputy Commissioner of Income Tax & Anr. v. Pepsi Foods Limited*³ wherein it had set aside the third proviso to Section 254 (2A) of the Income Tax Act, 1961 which has introduced the provision of automatic vacation of stay holding it to be unconstitutional due to its arbitrariness and in violation of Article 14 of the Constitution of India.

iv. Procedure for High Courts in Passing Interim Orders and Dealing with Applications to Vacate Them

The Supreme Court observed that the High Courts should grant *ad-interim* relief cautiously and temporarily, giving priority to hearing requests to vacate such relief when necessary. While detailed reasons might not always be required for granting interim relief, orders should demonstrate the application of judicial mind and consideration of relevant facts of the case. Vacating interim orders, particularly those granted after hearing all parties, demands a fair hearing to protect the rights of affected parties. Applications for vacating such orders should be heard expeditiously and given priority, rather than being delayed or deferred in view of the pendency of the main case, which would ensure the principles of fairness and natural justice in the legal system.

³ [2021] 4 SCR 1

2. Jurisdiction of Supreme Court versus High Court

One of the key issues examined by the Supreme Court in the instant case is whether the earlier decision of the Supreme Court in *Asian Resurfacing (Supra)* was correct in exercising its power under Article 142 of the Constitution to interfere with the jurisdiction of the High Court by limiting its power to grant interim orders only six months. Answering the issue negatively, the Supreme Court has held, that, putting any such constraints will be tantamount to curtailing the jurisdiction of the High Court under Article 226 of the Constitution, which is an essential feature that forms part of the basic structure of the Constitution, and is therefore impermissible. The Supreme Court examined the law relating to the position of the High Court, the power of superintendence of the High Court and the scope of power of the Supreme Court under Article 142 of the Constitution, to assess the correctness of *Asian Resurfacing (Supra)*.

i. Position of the High Court

The Supreme Court has held that the High Courts are not subordinate to the Supreme Court while relying on its judgment in *Tirupati Balaji Developers (P) Ltd. & Ors. v. State of Bihar & Ors.*⁴ wherein it has held that the High Court exercises the 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 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 given it being the ultimate appellate court of appeal.

ii. Superintendence of the Courts and Tribunal by the High Court

Article 227 of the Constitution prescribes the general power of superintendence which involves a duty on the part of the High Court to keep all courts and tribunals within its territorial jurisdiction “*within the bounds of their authority to see that they do what their duty requires and that they do it in a legal manner*”⁵. This also includes the power to stay the proceedings before such Courts or Tribunals. Further, the Supreme Court in the case of *L. Chandra Kumar v. Union of India & Ors*⁶ has held 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, and therefore cast a restriction on the Supreme Court’s interference with the supervisory jurisdiction of the High Courts.

iii. Scope of power of the Supreme Court under Art. 142 of the Constitution

The Constitution bench of the Supreme Court believed that the Court in *Asian Resurfacing (Supra)* had gravely erred in passing a blanket order of vacation of interim orders lawfully passed by the High Courts without hearing the parties. The Hon’ble Supreme Court deemed it necessary to examine the true purport and scope of the powers under Article 142 of the Constitution. The Court relied on the earlier judgments of the court in *Prem Chand Garg & Anr. v. The Excise Commissioner, U.P. and Ors.*⁷ and *Supreme Court Bar Association v. Union of India & Anr.*⁸ to hold that the directions in the exercise of power under Article 142 of the Constitution cannot be issued to defeat justice. The jurisdiction under Article 142 of the Constitution can be invoked only to deal with extraordinary situations for doing complete justice between the parties before the court. The Supreme Court felt it was expedient to lay down certain important parameters for exercising the power under Article. 142 of the Constitution, though they are not exhaustive:

- a. The jurisdiction can be exercised to do complete justice between the parties before the Court, however, the court cannot pass directions that deprive persons of their rights who are not a party before it.
- b. Article 142 of the Constitution does not empower the Supreme Court to ignore the substantive rights of the litigants.

⁴ [2004] Supp. 1 SCR 494

⁵ *Waryan v. Amarnath*, (1954) SCR 565

⁶ [1997] 2 SCR 1186

⁷ [1963] Supp. 1 S.C.R. 885

⁸ [1998] 2 SCR 795.

- c. Under Article 142 of the Constitution, the Supreme Court is vested with the powers to overcome the procedural restrictions and iron out the creases. However, even then the Court should be mindful to not affect the substantive rights of the litigants.
- d. The power of the Supreme Court under Article 142 of the Constitution cannot be exercised to defeat the principles of natural justice.

3. Courts cannot examine an issue which has not arisen for consideration

Another issue before the Constitution bench was whether the Courts could pass orders and directions on the issue for which there is no *lis* between the parties before the Court. In the case of *Asian Resurfacing (Supra)*, as discussed above, the issue before the Hon'ble Court was whether an order framing of charge in a case under the PC Act was in the nature of an interlocutory order and what is 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. The Supreme Court relying on the case of *Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd. & Anr*⁹ passed by a nine-judge bench of the Supreme Court, has held that judges are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Therefore, the court has erred in passing a blanket order that the interim orders passed by various High Courts shall automatically be vacated within six months without there being any issue regarding the same before the court.

4. No direction can be passed by the Court to decide the case on a time bound matter

Considering that in *Asian Resurfacing (Supra)* the Supreme Court had effectively held 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 the said period, the interim stay will be vacated automatically, virtually making the pending case infructuous. Therefore, the Constitution Bench of the Supreme Court has deemed it expedient to decide the correctness of fixing of timelines by constitutional courts for the disposal of cases. Terming the direction passed in *Asian Resurfacing (Supra)* as impermissible judicial legislation in the exercise of power under Article 142 of the Constitution, the Supreme Court enumerated the difficulties in fixing the timeline for deciding the cases:

- a. The High Courts are flooded with petitions under Article 227 of the Constitution 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. Therefore, it would be impractical to direct High Courts to expeditiously dispose of the cases in which the stay of proceedings of the civil/criminal trials is granted.
- b. 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.
- c. There are different categories of cases that require utmost priority but cannot be decided due to the staggering pendency of cases before the trial court. 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.
- d. 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 court therefore concluded that 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.

⁹ [1983] 1 SCR 1000

D. Conclusion

The judgement by the Constitution bench of the Supreme Court in *High Court Bar Association, Allahabad (supra)* attempts to correct the injustice caused to the parties after the decision in *Asian Resurfacing (Supra)*. The Supreme Court has not only overruled the decision in *Asian Resurfacing (Supra)* but has also laid down essential principles for the grant of interim relief and the role of the Constitutional courts, whose powers thought unfettered, also have certain checks and balances to take note of. The principles of law as laid down by the Constitution Bench of the Supreme Court are summarised herein below:

- a. The findings of the court in *Asian Resurfacing (Supra)* are erroneous, the Supreme Court under Article 142 of the Constitution could not have directed the automatic vacation of stay after the expiry of six months. However, in the trials that have already proceeded after the automatic vacation of stay in terms of *Asian Resurfacing (Supra)* in such cases, the automatic vacation of stay should remain valid.
- b. While granting ex-parte ad-interim relief without hearing the affected parties, the High Court should normally grant ad-interim relief for a limited duration. The affected party is at liberty to apply for vacation of stay and such application should be decided expeditiously.
- c. Supreme Court under Article 142 of the Constitution can always issue procedural directions to the courts, however, while exercising such power Supreme Court cannot affect the substantive rights of the litigants.
- d. The constitutional courts should restrain themselves from fixing any timelines on the subordinate courts.

Before parting, it would be relevant to quote the passage from the concurring opinion of Justice Pankaj Mithal from the judgment, *"Sometimes, in quest of justice we end up doing injustice. Asian Resurfacing is a clear example of the same. Such a situation 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 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."*

This Update has been prepared by Sanjeev Kaushik and Shreyas Awasthi who can be reached at sanjeev.kaushik@aquilaw.com and shreyas.awasthi@aquilaw.com. This Update is only for informational purposes and is not intended for solicitation of any work. Nothing in this Update constitutes legal advice and should not be acted upon in any circumstance.