

कार्यालय :- जिला एवं सत्र न्यायाधीश, होशंगाबाद (म0प्र0)

पृ0क्रमांक 58 / सां0लि0 / 2019

होशंगाबाद, दिनांक 10/01/2020

आदेशानुसार,

रजिस्ट्री ज्ञापन क. 02/PR(J)/2020, जबलपुर, दिनांक 09.01.20 के साथ प्राप्त माननीय उच्च न्यायालय की सिविल अपील क्रमांक 6088/2011, फजल उल्लाह खान विरुद्ध एम. अकबर कॉन्ट्रेक्टर में पारित निर्णय दिनांक 22.07.2019, की प्रतिलिपि :-

- 01- विशेष न्यायाधीश, होशंगाबाद
- 02- प्रथम/द्वितीय/तृतीय अति0 जिला न्यायाधीश, होशंगाबाद/पिपरिया/सोहागपुर/इटारसी
- 03- प्रथम /द्वितीय व्यवहार न्यायाधीश वर्ग-1, होशंगाबाद/इटारसी
- 04- प्रथम व्य0 न्यायाधीश वर्ग-1, होशंगाबाद के न्यायालय के प्रथम अतिरिक्त न्यायाधीश, होशंगाबाद
- 05- प्रथम/द्वितीय व्यवहार न्यायाधीश वर्ग-2, होशंगाबाद/पिपरिया/इटारसी
- 06- प्रथम व्यवहार न्यायाधीश वर्ग-2, होशंगाबाद के न्यायालय के प्रथम/द्वितीय/तृतीय/चतुर्थ अतिरिक्त न्यायाधीश, होशंगाबाद (ट्रेनी जज)
- 07- व्यवहार न्यायाधीश वर्ग-1, सोहागपुर/सिवनी मालवा
- 08- प्रथम व्यवहार न्यायाधीश वर्ग-2, पिपरिया के न्यायालय के अतिरिक्त न्यायाधीश, पिपरिया
- 09- प्रस्तुतकार सत्र न्यायाधीश, होशंगाबाद की ओर सूचनार्थ एवं निर्णय में वर्णित निर्देशों को कड़ाई से पालन किये जाने के निवेदन के साथ अग्रेषित ।
- 10 - लाइब्रेरी अनुभाग, होशंगाबाद

प्रशासनिक अधिकारी
कार्यालय जिला एवं सत्र न्यायाधीश
होशंगाबाद

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HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT – JABALPUR

// MEMORANDUM //

No. 02 /PR(J)/2020

Jabalpur, Dated 09/01/2020

To,

The District & Sessions Judge,
All in the State of Madhya Pradesh.

Sub.: Regarding compliance of directions issued by Hon'ble the Supreme Court vide order dated 22/07/2019 passed in Civil Appeal No.6088/2011 (Fazalullah Khan V/s M. Akbar Contractor (D) through L.Rs. & Others).

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Under the subject cited above, as directed, it is to inform that Hon'ble the Supreme Court has issued certain directions vide order dated 22/07/2019 passed in Civil Appeal No.6088/2011 (Fazalullah Khan V/s M. Akbar Contractor (D) through L.Rs. & Others) (2019 SCC OnLine SC 1513), to be complied with all the Trial Courts, relevant extract of which is reproduced as under:-

"We are constrained to pen down a more detailed order as the judgment of this Court in Asian Resurfacing of Road Agency's case (supra) is sought to be relied upon by difference courts even in respect of interim orders granted by this Court where the period of 6 months has expired. Such a course of action is not permissible and if the interim order granted by this Court is not vacated and continues beyond a period of 6 months by reason of pendency of the appeal, it cannot be said that the interim order would automatically stand vacated.

Thus, the interim order granted by this Court on 20th March, 2009 must continue to be in force till the appeal is decided.

The aforesaid observation made by us should be kept in mind by both the trial Court and the High Court while dealing with this aspect."

Therefore, as directed, please find enclosed herewith copy of the aforementioned order dated 22/07/2019 passed by Hon'ble the Supreme Court in Civil Appeal No.6088/2011, for circulating the same amongst all the Judicial Officers posted under your territorial jurisdiction, for ensuring strict compliance thereof.

Encl.:

Copy of order dated 22/07/2019.


(Rajendra Kumar Vani)
Registrar General

I.A. No. 27524 of 2019**Fazalullah Khan v. M. Akbar****2019 SCC OnLine SC 1513****In the Supreme Court of India****(BEFORE SANJAY KISHAN KAUL AND K.M. JOSEPH, JJ.)**

Fazalullah Khan Appellant(s);

v.

M. Akbar Contractor (D) By Lrs. and Others Respondent(s).

I.A. No. 27524 of 2019

In

Civil Appeal No(s). 6088 of 2011

Decided on July 22, 2019

ORDER

1. This Court in terms of the judgment in *Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation* (2018) 16 SCC 299 while dealing with the issue of speedy trial in criminal cases observed in para 34 as under:

"If contrary to the above law, at the stage of charge, the High Court adopts the approach of weighing probabilities and re-appreciating the material, it may be certainly a time consuming exercise. The legislative policy of expeditious final disposal of the trial is thus, hampered. Thus, even while reiterating the view that there is no bar to jurisdiction of the High Court to consider a challenge against an order of framing charge in exceptional situation for correcting a patent error of lack of jurisdiction, exercise of such jurisdiction has to be limited to rarest of rare cases. Even if a challenge to order framing charge is entertained, decision of such a petition should not be delayed. Though no mandatory time-limit can be fixed, normally it should not exceed two-three months. If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. 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.

2. The scope of the directions were expanded to an extent to all civil and criminal cases, on account of said proceedings being held up while observing as under:

"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 finalized. 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."

3. In the present case, the issue is of specific performance of an agreement which was granted by the first appellate court. The appellant is a tenant in the suit premises in whose favour the decree has been passed. The second appellate court reversed the decree. Leave has been granted by this court and the interim protection was granted on 20th March, 2009.

4. Learned counsel for the appellant submits that relying on the aforesaid judgment of this court in *Asian Resurfacing of Road Agency's case* (supra) in the eviction proceedings against the appellant as a tenant, the revisional court seeks to proceed on the basis of a submission of the respondents that on the expiry of period of six months, the interim stay is no more in force. He further states that the appellant undertakes before this court that if he loses in the present appeal, he will hand over vacant and peaceful possession within a time to be fixed by the Court without any further objection.

5. We are constrained to pen down a more detailed order as the judgment of this Court in *Asian Resurfacing of Road Agency's case* (supra) is sought to be relied upon by difference courts even in respect of interim orders granted by this Court where the period of 6 months has expired. Such a course of action is not permissible and if the interim order granted by this Court is not vacated and continues beyond a period of 6 months by reason of pendency of the appeal, it cannot be said that the interim order would automatically stand vacated.

6. Thus, the interim order granted by this Court on 20th March, 2009 must continue to be in force till the appeal is decided.

7. The aforesaid observation made by us should be kept in mind by both the trial Court and the High Court while dealing with this aspect.

8. The application accordingly stands disposed of.

9. The appeal being of the year 2011 is set down for hearing in the week commencing 20th August, 2019.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

IA 27524/2019, in Civil Appeal No(s). 6088/2011

Fazalullah Khan.....Appellant(s)

v.

M. Akbar Contractor (D) by Lrs. & Ors.....Respondent(s)

(I.A. No. 27524/2019 (application for direction) is to be listed IA No. 27524/2019 -
CLARIFICATION/DIRECTION)

Date : 22-07-2019 These matters were called on for hearing today.
(BEFORE SANJAY KISHAN KAUL AND K.M. JOSEPH, JJ.)

For Appellant(s) Mr. Naresh Kaushik, Adv.
Mr. Manoj Joshi, Adv.
Mr. Omung Raj Gupta, Adv.
Mr. Rahul Sharma, Adv.

Mrs. Lalita Kaushik, AOR
For Respondent(s) Mr. V. N. Raghupathy, ACR
UPON hearing the counsel the Court made the following

ORDER

10. The application is disposed of in terms of the signed reportable order.
11. The appeal being of the year 2011 is set down for hearing in the week commencing 20th August, 2019.

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