

Present: Syed Mansoor Ali Shah and Qazi Muhammad Amin Ahmed, JJ

COMMISSIONER INLAND REVENUE, MULTAN ZONE, RTO, MULTAN---Petitioner

Versus

FALAH UD DIN QURESHI---Respondent

C. P. No. 159 of 2021, decided on 12th October, 2021.

(Against the order of Lahore High Court, Multan Bench dated 11.02.2020, passed in T.R. No.8 of 2019)

Supreme Court Rules, 1980---

---O. I, R. 2 & O. IV, Rr. 2, 6, 15, 22, 26, 30, 31 & 32---Advocate-on-Record (AOR)---Responsibilities/duties towards the client and the Supreme Court stated.

Principal responsibility under the Supreme Court Rules, 1980 (the Rules) to act, appear and plead on behalf of the party was that of the Advocate-on-Record (AOR). It was the AOR who engaged the Advocate Supreme Court (ASC) and it on the instructions of the AOR that such ASC pleaded the case of the party. Engagement of the ASC did not absolve the AOR of his primary responsibility to attend to the case on behalf of the party before the Court, and in case the ASC was not available, it was the responsibility of the AOR to appear and plead the case of the party. It was, of course, the discretion of the Court to grant adjournment in any particular case if the ASC was not available, considering the nature and complexity of the case, but that did not relieve the AOR from his responsibility under the Rules to be fully prepared to act, appear and plead the case of the party, irrespective whether the ASC was present or not.

The concept of enrolling AORs at the Supreme Court, as the Rules signified, was to ensure that the cases filed in the Supreme Court were handled by certain designated lawyers called the AORs; this ensured proper management of cases, timely service of court-process to parties and certainty of representation before the Court leaving no margin for adjournments as was in other courts. All this was to achieve timely decisions of cases by the apex Court. Supreme Court observed that if the AORs were not performing their responsibility, it certainly begged the questions: whether the institution of AORs was required anymore?; had it outlived its utility and was causing more disservice to the litigants and the Court than achieving the benefits of this institution alluded to in the Rules?

Syed Rifaqat Husain Shah, Advocate-on-Record for Petitioner.

Nemo for Respondent.

Date of hearing: 12th October, 2021.

ORDER

SYED MANSOOR ALI SHAH, J.---No one appeared on behalf of the petitioner when the case was called as there was a written request for adjournment by the Advocate-on-Record ("AOR") for the petitioner on behalf of the Advocate Supreme Court of Pakistan ("ASC"). We sent for the AOR in the case, who appeared later in the day. He was asked to address the Court on the question of limitation, as the petition for leave to appeal before this Court was barred by time and the application for condonation of the delay did not disclose any sufficient cause to condone the delay. Learned AOR, instead of arguing the application, submitted without any remorse that he was not aware of the application (which had been signed and filed by him) and did not even have the file of the case, with him.

2. We are thus constrained to remind the learned AOR of his responsibilities to his client, the petitioner, and the Court under the Supreme Court Rules, 1980 ("Rules"). Relevant provisions of the Rules are reproduced hereunder for ready reference:

ORDER I, Rule-2

"Advocate-on-Record" means an Advocate, who is entitled, under these Rules, to act and plead for a party in the Supreme Court. "Party" and all words descriptive of parties to proceedings before the Court (such as "appellant", "respondent", "plaintiff", "defendant" and the like) include, in respect of all acts proposed to be done by an Advocate-on-Record, Advocate-on-Record of the party in question, when it is represented by an Advocate-on- Record....

ORDER IV

ADVOCATES AND ADVOCATES-ON-RECORD

2. A Senior Advocate, an Advocate and an Advocate-on-Record shall be entitled to appear and plead before the Court on signing his respective Roll; Provided that an Advocate shall not be allowed to sign the Roll unless he produces a certificate of enrolment from the Pakistan Bar Council; and Provided further that the Chief Justice and the Judges may refuse to allow a person to sign the Roll or remove his name from the Roll after affording him an opportunity of oral hearing if he has, at any time, been adjudged guilty of professional misconduct or is otherwise considered unfit to be enrolled or allowed to remain as an advocate.

..

6. No Advocate other than an Advocate-on-Record shall appear or plead in any matter unless he is instructed by an Advocate-on-Record.

..

15. No Advocate other than an Advocate-on-Record shall be entitled to act for a party in any proceedings in the Court.

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22. Every Advocate-on-Record shall, before acting on behalf of any person or party, file in the Registry a power of attorney in the prescribed form authorizing him to act.

..

26. No person having an Advocate-on-Record in the case shall be heard in person save by special leave of the Court:

Provided that where a person is not represented by an Advocate-on-Record or has been permitted by the Court to appear in person, he shall be subject to same discipline and restrictions as are applicable to an Advocate-on-Record.

..

30. Where, on the complaint of any person or otherwise, the Chief Justice or the Court is of the opinion that a Senior Advocate or an Advocate or an Advocate-on-Record has been guilty of misconduct or conduct unbecoming of an Advocate, with regard to any matter concerning the Court, the Chief Justice or the Court may either after affording him an opportunity of oral hearing, take such disciplinary action, including suspension and removal from practice of the Court, against him as it may deem fit, or refer to the Pakistan Bar Council for inquiry and action under the Legal Practitioners and Bar Councils Act, 1973.

31. In an appropriate case, where the Chief Justice or the Court is of the opinion that a Senior Advocate or an Advocate-on-Record is unfit to act and plead as such, the Chief Justice or the Court may, after providing him an opportunity of oral hearing, direct removal of his name from the Roll of Senior Advocates or of Advocates-on-Record, as the case may be.

32. Nothing in this Order shall be deemed to limit or otherwise affect the inherent powers of the Court to make such order and take such action as may be necessary for the conduct and proceedings of the Court.

Perusal of the above Rules shows that the AOR is defined as an Advocate, who is to act and plead for a party in the Supreme Court. The definition of "party" also include an AOR, when such a party is represented by the AOR. Rule 2 of Order IV states that the AOR is entitled to appear and plead before the Court on signing his respective roll. Rule 6 of the said Order provides that no Advocate other than AOR shall appear and plead on behalf of the party unless he is instructed by the AOR while Rule 15 states that no Advocate other than AOR shall be entitled to act on behalf of a party in any proceedings in the Court. Rules 22 and 26 underline that every AOR on submission of his power of attorney shall act on behalf of the party and that no person having an AOR shall be heard in person except with specific leave of the Court.

3. The above provisions clearly show that the principal responsibility under the Rules to act, appear and plead on behalf of the party is that of the AOR. It is the AOR who engages the ASC and it on the instructions

of the AOR that such ASC pleads the case of the party. Engagement of the ASC does not absolve the AOR of his primary responsibility to attend to the case on behalf of the party before the Court, and in case the ASC is not available, it is the responsibility of the AOR to appear and plead the case of the party. It is, of course, the discretion of the Court to grant adjournment in any particular case if the ASC is not available, considering the nature and complexity of the case, but that does not relieve the AOR from his responsibility under the Rules to be fully prepared to act, appear and plead the case of the party, irrespective whether the ASC is present or not.

4. In the instant case, the learned AOR did not even find it appropriate to appear before the Court after having submitted a written application for adjournment on behalf of the ASC, and when he appeared, a simple question was asked by the Court to justify whether condonation of the delay in filing the petition for leave to appeal can be granted on the ground agitated in the application, which stated:

"2. That since it is the official matter and there are many formalities to be fulfilled while getting the permission of high-ups for filing the petition against any order/judgment before any higher forum which takes time."

The response of the learned AOR was that he does not even have the file of the case. It is important to draw the attention of the AOR to Rules 30 and 31, reproduced above, under which such a behavior may make the AOR liable for misconduct, leading to disciplinary action against him including suspension of his license and removal from the practice of the Court. Therefore, the AOR ought to have taken his responsibility seriously.

5. The concept of enrolling AORs at the Supreme Court, as the Rules signify, is to ensure that the cases filed in the Supreme Court are handled by certain designated lawyers called the AORs; this ensures proper management of cases, timely service of court-process to parties and certainty of representation before the Court leaving no margin for adjournments as is in other courts. All this is to achieve timely decisions of cases by the apex Court. However, if the AORs are not performing their responsibility, as in this case, it certainly begs the questions: Whether the institution of AORs is required anymore? Has it outlived its utility and is causing more disservice to the litigants and the Court than achieving the benefits of this institution alluded to in the Rules?

6. We have examined the application for condonation of delay (C.M.A. No. 949/2021) in the presence of the learned AOR for the petitioner, which does not disclose any sufficient cause for condonation of the delay. The learned AOR has not rendered any assistance or made any other submission. The application for condonation of the delay is found meritless and is therefore dismissed. Consequently, the main petition for leave to appeal is also dismissed as being barred by time.

MWA/C-17/SC Petition dismissed.
