

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Ayesha A. Malik, JJ

FAKHAR NAWAZ---Petitioner

Versus

ADMINISTRATIVE SECRETARY/SENIOR MEMBER BOARD OF REVENUE, PESHAWAR and
others---Respondents

C.M.A. 10945 of 2022 in C.P. 3884 of 2019, decided on 20th March, 2023.

(Restoration Application against the order dated 12.10.2022, passed in C.P. No.3884 of 2019)

Supreme Court Rules, 1980---

---O. IV, Rr. 6, 15, 23 & 24---Application for restoration of Civil Petition dismissed for non-prosecution--- Violation of the Supreme Court Rules, 1980---Change of Advocate on Record (AOR) and Advocate Supreme Court (ASC) without consent of the earlier AOR or permission of the Court---Contents of the present restoration application, as well as, the submissions made by the counsel fail to meet the requirement of the Supreme Court Rules, 1980---Restoration application is not only silent regarding the legal requirements mentioned in the Supreme Court Rules, 1980 but is also in violation of the same---Restoration application fails to show how the present ASC has appeared in this case without the instructions of the earlier AOR as required under Rule 6 of Order IV of the Supreme Court Rules; the application does not disclose as to why the application was not filed by the earlier AOR as per Rule 15; how did the petitioner authorize and how did the new AOR file his power of attorney without the consent of the earlier AOR or without the leave of the Court as required under Rule 23; it is also not clear as to how the earlier AOR has been removed as no AOR can withdraw from the case without the leave of the Court as provided under Rule 24---Neither the petitioner, the AOR nor the ASC have bothered to pay any heed to the Supreme Court Rules, 1980 before filing the present application---Application being in flagrant disregard of the Supreme Court Rules, 1980 was not maintainable, and therefore, was dismissed with costs of Rs.20,000/- for being frivolous and having wasted the time of the Court.

Syed Amjad Ali Shah, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 20th March, 2023.

ORDER

SYED MANSOOR ALI SHAH, J.---The main Civil Petition (CPLA No.3884/2019) was filed by Muhammad Sahrif Janjua, AOR and drawn by Muhammad Ramzan Khan, ASC. It was dismissed for non-prosecution vide order dated 12.10.2022. The instant restoration application has been filed by Ahmed Nawaz Chaudhry, AOR and drawn by Syed Amjad Shah, ASC. Both of them have been newly appointed by the petitioner for filing the instant restoration application.

2. We have heard the learned counsel for the petitioner, and examined the record and the Supreme Court Rules, 1980 ("SC Rules"). We have noticed that the instant application is barred by 46 days and application for condonation of delay does not disclose any sufficient cause. Additionally, we have also noticed that the instant application has not been filed by the original AOR or drawn by the original ASC but by the newly appointed AOR and ASC. We have drawn the attention of the learned counsel to Rules 6, 15, 23 and 24 of Order IV of the SC Rules, which are reproduced hereunder for ready reference.

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.

23. No person having an Advocate-on-Record shall file a power of attorney authorizing another Advocate-on-Record to act for him in the same case save with consent of the former Advocate-on-Record or by leave of the Court, unless the former Advocate-on-Record is dead, or is unable by reason of infirmity of mind or body to continue to act.

24. No Advocate-on-Record shall without leave of the Court withdraw from the conduct of any case by reason only of non-payment by his client of fees, costs and other charges.

The contents of the restoration application, as well as, the submissions made by the learned counsel fail to meet the requirement of the above SC Rules. The restoration application is not only silent regarding the legal requirements mentioned in the SC Rules but is also in violation of the same. The application fails to show how the present ASC (Syed Amjad Shah, ASC) has appeared in this case without the instructions of the earlier AOR (Muhammad Sharif Janjua) as required under Rule 6; the application does not disclose as to why the application was not filed by the earlier AOR as per Rule 15; how did the petitioner authorize and how did the new AOR file his power of attorney without the consent of the earlier AOR or the without the leave of the Court as required under Rule 23; it is also not clear as to how the earlier AOR has been removed as no AOR can withdraw from the case without the leave of the Court as provided under Rule 24. The above shows that the instant application has been filled in violation of the SC Rules and neither the Petitioner, the AOR nor the ASC have bothered to pay any heed to the SC Rules before filing this application. This is most disconcerting especially because the new AOR (Ahmed Nawaz Chaudhry) has totally overlooked and bypassed the SC Rules. This restoration application being in flagrant disregard of the SC Rules is not maintainable. It is, therefore, dismissed with costs of Rs.20,000/- in terms of Order XXVIII, Rule 3 of the Supreme Court Rules, 1980 for being frivolous and having wasted the time of the Court. The costs shall be deposited with the Deputy Registrar (Judicial) of this Court within a fortnight from today, which shall then be paid to the respondents.

4. We, however, in the interest of justice, allow the petitioner to move an application for restoration of the aforesaid Civil Petition, if so advised, strictly in accordance with the SC Rules, which if filed, will be taken up on its own merits including the question of limitation. Copy of this order shall be dispatched to the respondents for information and shall also be placed on the record of this case so that it is available when any fresh restoration application is filed by the petitioner.

MWA/F-10/SC Application dismissed.