

Present: Syed Mansoor Ali Shah, Amin-ud-Din Khan and Ayesha A. Malik, JJ

MUHAMMAD IQBAL (deceased)---Applicant

Versus

AHMAD DIN (deceased) through his L.Rs. and others---Respondents

C.M.A. No. 1609-L of 2021 in C.R.P. No.NIL-L of 2021 in C.A. No.5-L of 2010, C.M.A. No.1610-L of 2021 in C.R.P. No.Nil-L of 2021 and C.M.A. No.586-L of 2022 in C.R.P. No. Nil-L of 2021 in C.A. No.5-L of 2010, decided on 30th December, 2022.

(Application for grant of permission to represent the petitioner).

(a) Supreme Court Rules, 1980---

---O. XXVI, Rr. 1, 6 & 8---Change of Advocate in a review petition---Special leave to substitute a counsel in a review petition is to be granted, only when appearance of the earlier counsel is not possible due to some unavoidable circumstances---Practice of filing review applications by changing the counsel without justifiable reasons or unavoidable circumstances, by the parties as well as by the Advocates representing them is condemnable---Scope of Order XXVI, Rule 6 of the Supreme Court Rules, 1980, regarding change of Advocate in a review petition stated.

Order XXVI of the Supreme Court Rules, 1980 ('the Rules') requires the same Advocate, who earlier appeared to argue the case, to draw up the review application and appear in support of it before the Court for certain reasons. It is because a review petition is not the equivalent of a petition for leave to appeal or an appeal where the case is argued for the first time. It is not the rehearing of the same matter. The scope of review application is limited to the grounds mentioned in Order XXVI, Rule 1 of the Rules. The Advocate who had earlier argued the main case is perhaps the best person to evaluate whether the said grounds of review are attracted in the case. He being part of the hearing of the main case is fully aware of the proceedings that transpired in the Court leading to the judgment or order sought to be reviewed. He is the one who knows what was argued before the Court and what weighed with the Court in deciding the matter either way. It is also for the same reason that the review application is to be fixed before the same Bench that delivered the judgment or order sought to be reviewed, under Rule 8 of Order XXVI of the Rules. The same Advocate and the same Bench can best appreciate the grounds of review. A review argued by a new Advocate before a new Bench would inevitably amount to rehearing of the main case and going beyond the scope of review under the law. It is true that the requirement of "sufficient ground" for granting the special leave is not expressly stated in Rule 6, but this does not mean that the discretion of the Court to grant or decline the special leave is arbitrary or is mechanical on filing of an application in this regard by a petitioner. This discretion, like all other discretions, is to be exercised judiciously for valid reasons by considering the circumstances of the case. The special leave to substitute a counsel in a review petition is to be granted, only when appearance of the earlier counsel is not possible due to some unavoidable circumstances. The practice of filing review applications by changing the counsel without justifiable reasons or unavoidable circumstances, by the parties as well as by the Advocates representing them is condemnable.

Federation of Pakistan v. Dr. Mubashir Hassan PLD 2011 SC 674; Messrs National Electric Co. v. Khalid Siddique PLD 2005 SC 405 and Tamil Nadu Electricity Board v. Raju Reddiar AIR 1997 SC 1005 ref.

(b) Supreme Court Rules, 1980---

---O. IV, Rr. 23, 24 & O. XXVI, Rr. 4, 6, 8---Change of Advocate in a review petition---Scope---Special leave to substitute a counsel in a review petition---In the present case, the ground pleaded for grant of the special leave was that the earlier counsel due to ill health and old age could not file the present review petition---Firstly, there was no medical certificate attached along with the NOC tendered by the said counsel besides the "old age" of the said counsel was also not specified---More importantly as per Order XXVI Rule 4 of the Supreme Court Rules, 1980 ('the Rules') there was no certificate given by the earlier counsel that review was justifiable in the present case---Further, the said application was silent regarding change of Advocate on Record (AOR)---Under Order IV Rule 23 of the Rules 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 except with the 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 and body to continue to act---Nothing was available on record of present case to show why, AOR who had also appeared in the Civil Appeal had been replaced without furnishing her consent to such effect or without assigning any reason for her non-appearance as provided under Rule 23---Under Order IV, Rule 24 no Advocate on Record without leave of the court can withdraw from the conduct of any case---Application seeking permission under Order XXVI, Rule 6 of the Rules was not made out in the present case---No other ground was agitated before the Court for the change of the counsel or the AOR that would make out a case of grant of special leave to substitute the counsel for drafting, filing and arguing the review petition---No reason was furnished as to why AOR had been replaced, who had also appeared along with Advocate sought to be replaced in the order under review---Thus the application made under Order XXVI, Rule 6 of the Rules was rejected and consequently, the review petitions were not entertained.

Muhammad Tariq Bashir Awan, Advocate Supreme Court for Applicant/appellant.

Nemo for Respondents.

Date of hearing: 30th December, 2022.

ORDER

Syed Mansoor Ali Shah, J

C.M.A. No. 1609-L of 2021: Through this application permission is sought by the learned counsel to represent the petitioner in review petition by replacing the earlier counsel. It is stated in the application that the earlier counsel namely Mr. Shuja ud Din Hashmi, ASC has given NOC in favour of Mr. Muhammad Tariq Bashir Awan, ASC, on the ground of his ill health and old age. There is no reason furnished in the application as to why the Advocate on Record namely Mst. Tasneem Amin, AOR cannot represent the petitioner and is being replaced, considering that both Mr. Shuja ud Din Hashim, ASC and Ms. Tasneem Amin, AOR appeared on behalf of the applicants before this Court to argue Civil Appeal No. 5-L of 2010 as reflected in the order under review dated 23.07.2021.

2. Order XXVI of the Supreme Court Rules 1980 ("Rules") deals with the practice and procedure of this Court in exercising its review jurisdiction. It lays special emphasis on the role and obligation of the Advocate who is to draw up the application for review and appear in support of it before the Court. Under Rule 6 an application for review has to be drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made. Under Rule 4, the Advocate who draws up the review application has not only to specify the points upon which the prayer for review is based but he has also to add his certificate to the effect that the review would be justifiable in accordance with the law and practice of the Court. Rule 5 provides that in case the Court comes to the conclusion that the review application filed was vexatious or frivolous, the Advocate or the Advocate on Record drawing the application shall render himself liable to disciplinary action, while Rule 7 provides that no application for review shall be entertained unless party seeking review furnishes cash security of Rs. 10,000/- which shall stand forfeited if the review petition is dismissed or shall be paid to the opposite-party, if the review petition is contested. Rule 6, thus, has to be seen and applied in the overall scheme of Order XXVI of the Rules.

3. Order XXVI of the Rules requires the same Advocate, who earlier appeared to argue the case, to draw up the review application and appear in support of it before the Court for certain reasons. It is because a review petition is not the equivalent of a petition for leave to appeal or an appeal where the case is argued for the first time. It is not the rehearing of the same matter. The scope of review application is limited to the grounds mentioned in Order XXVI Rule 1 of the Rules. The Advocate who had earlier argued the main case is perhaps the best person to evaluate whether the said grounds of review are attracted in the case. He being part of the hearing of the main case is fully aware of the proceedings that transpired in the Court leading to the judgment or order sought to be reviewed. He is the one who knows what was argued before the Court and what weighed with the Court in deciding the matter either way. It is also for the same reason that the review application is to be fixed before the same Bench that delivered the judgment or order sought to be reviewed, under Rule 8 of Order XXVI of the Rules. It is not hard to see that the same Advocate and the same Bench can best appreciate the grounds of review. A review argued by a new Advocate before a new Bench would inevitably amount to rehearing of the

main case and going beyond the scope of review under the law. It is true that the requirement of "sufficient ground" for granting the special leave is not expressly stated in Rule 6, but this does not mean that the discretion of the Court to grant or decline the special leave is arbitrary or is mechanical on filing of an application in this regard by a petitioner. This discretion, like all other discretions, is to be exercised judiciously for valid reasons by considering the circumstances of the case. The special leave to substitute a counsel in a review petition is to be granted, as held by a full bench of this Court in Dr. Mubashir Hassan's case¹, only when appearance of the earlier counsel is not possible due to some unavoidable circumstances. The practice of filing review applications by changing the counsel without justifiable reasons or unavoidable circumstances, by the parties as well as by the Advocates representing them is condemnable.² See order of the Court passed in C.M.A. No. 3610/2022, etc. dated 24.10.2022.³

4. In this particular case, the ground pleaded for grant of the special leave is that the earlier counsel due to ill health and old age cannot file the instant review petition. Firstly, there is no medical certificate attached along with the NOC tendered by the said learned counsel besides the "old age" of the said counsel is also not specified. More importantly as per Order XXVI, Rule 4 there is no certificate given by the earlier counsel that review is justifiable in the instant case. Further, it is also noted that the said application is silent regarding change of Advocate on Record. Under Order IV Rule 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 except with the 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 and body to continue to act. There is nothing on the record to show why Ms. Tasneem Amin, AOR who had also appeared in the Civil Appeal No.5-L/2010 has been replaced without furnishing her consent to this effect or without assigning any reason for her non-appearance as provided under Rule 23 above. It is also underlined that under Order IV Rule 24 no Advocate on Record without leave of the court can withdraw from the conduct of any case.

5. We are, therefore, of the view that application seeking permission under Order XXVI, Rule 6 of the Rules is not made out. There is no other ground agitated before us for the change of the counsel or the AOR that would make out a case of grant of special leave to substitute the counsel for drafting, filing and arguing the review petition. Therefore, we see no valid reason or unavoidable circumstances to grant the special leave as prayed for. There is no reason furnished as to why AOR has been replaced, who had also appeared along with ASC in the order under review. Thus the application made under Order XXVI, Rule 6 of the Rules is rejected and consequently, the review petitions are not entertained. We affirm the view taken by this Court in C.M.A. 3610/2022, etc. vide order dated 24.10.2022.⁴

MWA/M-1/SC Order accordingly.