

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi
Mr. Justice Jamal Khan Mandokhail

C.M.A. No. 8093 of 2020 in Civil Review Petition No. Nil of 2020 in Civil Petition No. 144 of 2018

(Against the order dated 15.09.2020 passed by this Court in Civil Petition No. 144 of 2018)

Ghulam Rasool

... *Applicant/Petitioner*

Versus

Muhammad Siddiq, etc.

... *Respondents*

For the Applicant/Petitioner: Mr. Aftab Alam Yasir, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondents: Not represented.

Date of Hearing: 28.10.2022

ORDER

Qazi Faez Isa, J. Civil Petition No. 144 of 2018 was disposed of on 15 September 2020 in the following terms:

‘It is now 12.40 pm and there is no attendance on behalf of the petitioner. This case was adjourned on 4 August 2020 and earlier on 9 January 2019, both times on the request of the petitioner. It appears that the petitioner has lost interest. Be that as it may, we have examined the three concurrent impugned judgments.

2. The pre-emption suit of the petitioner was dismissed for the reason, amongst others, that the postman was not produced to establish the service of the *Talb-i-Ishhad* notice. This was a valid reason for dismissal of suit as held by this Court in the cases of *Muhammad Bashir v Abbas Ali Shah* (2007 SCMR 1105), *Bashir Ahmed v Ghulam Rasool* (2011 SCMR 762), *Allah Ditta v Muhammad Anar* (2013 SCMR 866), *Basharat Ali Khan v Muhammad Akbar* (2017 SCMR 309) and *Sultan v Noor Asghar* (2020 SCMR 682). Therefore, the petitioner’s pre-emption suit would not have succeeded. Consequently, it would be pointless to grant leave which is accordingly declined. This petition is dismissed on merit and for non-prosecution.’

2. **CMA No. 8093 of 2022 ('the application')**: The application has been filed under Order XXVI, rule 6 of the Supreme Court Rules, 1980 (**'the Rules'**) seeking permission to enable Mr. Aftab Alam Yasir, Advocate of the Supreme Court (**'ASC'**) to represent the petitioner in place of Ch. Ashraf Hameed Sindhu who was engaged by the Advocate-on-Record (**'AOR'**) to represent him. Order XXVI, rule 6 of the Rules is reproduced hereunder:

'6. Except with the special leave of the Court, no application for review shall be entertained unless it is drawn by the Advocate who appeared at the hearing of the case in which the judgment or order, sought to be reviewed, was made. Nor shall any other Advocate, except such Advocate, be heard in support of the application for review, unless the Court has dispensed with the requirement aforesaid.'

The only reason cited in the application to substitute the ASC is that he *'could not appear before this Honourable Court on fixed date i.e. 16.09.2020'*, but no reason is given for why he *could not appear*. Since no reason, let alone a valid one, is mentioned in the application, the same is dismissed.

3. Though we have dismissed the application we granted permission to Syed Rifaqat Hussain Shah, learned AOR, to argue the review petition to ensure that no injustice is done to the review petitioner. However, he was not able to make out any case justifying the review of the order of this Court dated 15 September 2020, let alone to bring it within the scope of the review jurisdiction of this Court (Article 188 of the Constitution of the Islamic Republic of Pakistan and Order XXVI, rule 1 of the Supreme Court Rules, 1980). Therefore, the review petition, which has been belatedly filed with a delay of nine days, is dismissed.

4. We take this opportunity to remind the learned AORs and the learned ASCs that the filing of vexatious or frivolous review petitions are visited upon with consequences; Order XXVI, rule 5 of the Rules, which states this, is reproduced hereunder:

'5. 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.'

5. In our opinion the review petition is vexatious having unnecessarily taken up valuable Court time, and is also frivolous as it asserts no point

which may require reviewing this Court's order. However, disciplinary action need not be taken against the learned AOR and it would suffice to remind him not to file such vexatious and frivolous applications in the future and we expect he will undertake his professional duties with the professionalism that we expect from him.

6. Certain other provisions of the Rules were also disregarded herein, therefore, it would be appropriate to refer to them. Order IV, rule 6 of the Rules provides that it is only an *Advocate* (Advocate Supreme Court) instructed by an Advocate-on-Record who can represent a party. In this case the learned AOR had engaged another ASC for the reason that his client desired this. When a rule specifically provides who may represent the petitioner (Order XXVI, rule 6 of the Rules) then the petitioner's *desire* (in itself) is not a sufficient reason to disregard the Rules. In this case the learned AOR, with the Court's leave, could have filed the review petition and proceeded with it himself; there was no need to engage another ASC. And, once an AOR has been engaged he cannot, without the leave of the Court, withdraw from the case and can never do so for the reason that his fee, cost and/or other charges have not been paid (Order IV, rule 24 of the Rules).

7. Copy of this order be sent to all the learned Advocates-on-Record of this Court for information and compliance.

Judge

Judge

Judge

Islamabad
28.10.2022
Arif

Approved for Reporting