

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD

MR. JUSTICE AMIN-UD-DIN KHAN

MR. JUSTICE SYED HASAN AZHAR RIZVI

C.M.A.No.NO. 649-L OF 2021 in Civil Review Petition No. Nil of 2021 in CPLA. No. 1719-L of 2020.

(Against the order dated 04.02.2021
passed in CPLA No. 1719-L of 2020.)

Irfan Azam and others

... Petitioner(s)

VERSUS

Mst. Rabia Rafique and others

... Respondent(s)

For the Applicant(s) : Agha Muhammad Ali Khan, ASC with
Syed Rifaqat Hussain Shah, AOR.
(In CMA.No. 649-L of 2021).

For the Applicant(s): Syed Qalb-i-Hassan, ASC
(In CMA No. 269-L of 2021).

For the Respondents. Mr. Rashid Hafeez, ASC.
Mr. Anis Muhammad Shehzad, AOR.

Date of Hearing : 27.01.2023

ORDER

AMIN-UD-DIN KHAN, J. This is an application on behalf of the petitioners under Rule 6 of Order XXVI read with Order XXXIII Rule 6 of the Supreme Court Rules, 1980(**the Rules**) for entertaining the review petition and for permission to file and argue the case. Vide order dated 04.02.2021, after hearing full arguments of learned counsel for the petitioner Mr. Mumtaz Mustafa, ASC, Civil Petition No. 1719-L of 2020 was dismissed by this Court. Along with the instant application a review petition No. Nil of 2020 has been filed. The ground for permission is

mentioned in Para No. 2 of the application, which is reproduced:-

"That the present petitioners were represented by Mr. Mumtaz Mustafa, ASC in CPLA No. 1719-L of 2020 before this Honourable Court. Now the petitioners have engaged Agha Muhammad Ali Khan, ASC who will appear and argue the instant Review Petition on behalf of the petitioners before this Honourable Court."

Along with this petition at Page 13 purportedly to meet with the requirement of Order XXVI Rule 6 of the Rules, a Certificate of the previous counsel namely Mr. Mumtaz Mustafa, ASC is appended, who appeared and argued the case at the time of hearing of Civil Petition. Para 2 of the said certificate is also important and the same is reproduced:-

"That since the party has lost confidence in me, therefore, in order to enable the party to file review petition, the applicant has no objection to file review petition on their behalf through another learned counsel of their choice so as to enable the petitioners to exhaust their lawful remedy of review and it may kindly be heard and decided on merits."

At the time of hearing when confronted with the learned counsel that how the said certificate meets with the requirement of Order XXVI Rule 6 of the Rules and what is the legal ground for grant of permission to engage a new counsel to file and argue the matter, learned counsel sought adjournment. Thereafter, another application i.e. CMA No. 860-L of 2021 was filed for permission to file amended review petition. The amended review petition was also filed along with this petition. Thereafter, another CMA No. 268 of 2023 was filed for additional documents

whereby a No Objection Certificate from previous counsel was attached and some Photostat copies of the suit and the interim order sheet were sought to be produced. During the hearing another counsel namely Syed Qalb-i-Hassan, ASC along with Agha Muhammad Ali Khan, ASC appeared. When confronted with the learned counsel that main application was filed by only Agha Muhammad Ali Khan, ASC and there is no mention of Syed Qalb-i-Hassan, ASC, learned counsel stated that they have a joint office.

2. We have heard the arguments of learned counsel for the applicants as well as learned counsel for the respondents. In the light of Order XXVI Rule 6 of the Rules the ground pleaded for permission to file and argue the case is hardly a ground under the said provision of law for grant of permission. Even along with this application the alleged certificate hardly meets with the requirement of the relevant rule which is Rule 6 of Order XXVI. The certificate at Page 13 of the petition by the previous counsel hardly satisfies the provision of Rule 4 of Order XXVI of the Rules. This Court has expressed its view in a judgment reported as "Muhammad Younas and others versus The State" (PLD 2005 Supreme Court 93). We quote a paragraph from the said judgment:-

"This Court has always discouraged substitution of another counsel at the stage of hearing of the Review Petition, definitely with a view that if such practice is adopted, there would be no end to litigation and replacement of original counsel by another counsel at the Review stage for the reasons that he intends to

argue a substantial question of law having public importance, would lead to no end to the litigation."

Further from a judgment of this Court reported as "Amjad Hussain versus Nazir Ahmad and others"(PLD 2023

Supreme Court 22) a relevant paragraph is reproduced:-

"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 case, only when appearance of the earlier counsel is not possible due to some unavoidable circumstances."

Further our view has already been expressed in a case reported as "Ghulam Rasul etc. versus Settlement and Rehabilitation Commissioner, Gujranwala etc."(1980 SCMR

962) which reads as follows:-

"Unless circumstances be compelling or the absence unavoidable compliance with this rule has to take place."

The Indian Supreme Court also shares the same view, which can be read in "Tamil Nadu Electricity Board and Ors. Vs. N. Raju Reddiar and Ors." (AIR 1997 SC 1005):-

"Unfortunately, it has become, in recent time, a practice to file such review petitions as routine; that too, with change of counsel, without obtaining consent of the advocate on record at an earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession."

In the light of the law already enunciated by this Court, neither are therein the instant case any compelling circumstances to change the counsel nor the circumstances are unavoidable as the previous counsel is also available and in the first certificate given by the said counsel the ground taken by the said counsel that the party has lost confidence in the said counsel and they want to change the said counsel is hardly a ground to allow the substitution of a counsel at the review stage. If permission is liberally granted, it would not only be against the said rules but would make the rule redundant and would further lead to endless litigation. In this view of the matter, there is no reason to allow this application, therefore, the same stands dismissed. All the other applications which have been noted supra also stand dismissed.

Judge

Judge

Judge

Islamabad, the
27.01.2023

Approved for reporting.
Mazhar Javed Bhatti/-