

SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mrs. Justice Ayesha A. Malik

**C.M.A.3610/2022 IN C.R.P.NIL/2022 IN C.A.1256/2014 and
C.M.A.3611/2022 IN C.R.P.NIL/2022 IN C.A.1257/2014**

*(Against the judgment of this Court dated 25.02.2022,
passed in Civil Appeals No.1256 and 1257 of 2014)*

Amjad Hussain (In both cases)

..... **Petitioner**

Versus

Nazir Ahmad & others (In both cases)

..... **Respondents**

For the petitioner: Syed Rifaqat Hussain Shah, AOR.
(In both cases)

For the respondents: N.R.

Date of hearing: 24.10.2022

ORDER

Syed Mansoor Ali Shah, J.- These applications have been filed under Order XXVI, Rule 6 of the Supreme Court Rules 1980 ("**Rules**"), seeking special leave of the Court for entertaining the review petitions drawn by an Advocate other than that who appeared at the hearing of the cases in which the judgment sought to be reviewed was made as well as seeking permission to be heard in support of the said review petitions. Order XXVI, Rule 6 of the Rules is reproduced hereunder for ready reference:

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.

2. The only reasons given in the applications is that learned counsel who earlier appeared for the petitioner, namely, Syed Najam-ul-Hassan Kazmi, ASC, has refused to file the review petitions against the impugned judgment dated 25.02.2022. We are afraid, the reason given is utterly insufficient to grant the leave sought.

3. Order XXVI of the 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.

4. 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 to 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 case*¹, 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

5. In this particular case, the ground pleaded for grant of the special leave is that the earlier counsel has refused to file the review petitions, and no other reason has been mentioned as to why he has so refused or what are the circumstances that prevented him to draft the review petition, file the requisite certificate under Rule 4 and appear in support of the review petitions. The stated refusal on his part to file the review petitions *prima facie* suggests that he believes that there is no sufficient ground for review and he being a responsible Senior Advocate of this Court has refused to file the frivolous review petitions, having regard to the observations made by this Court in *Muhammad Khaliq v. Gul Afza*³ in the following terms:

6. We have noted that review petitions are increasingly being filed as a matter of routine. As a consequence, the certificate required under Order XXVI, Rules 4 and 5 is given as a matter of course by the learned Advocates without application of mind. Statistics provided by the Office show that 1324 review petitions were filed in 2013 and 2014. We also note that a certificate has been given in the present case by the learned counsel to the effect that "according to law and established practice of this Hon'ble Court it is a fit case for review ...". Far from being a fit case for review, we find that the law and established practice of this Court demonstrates that this is a frivolous petition where a certificate in terms of Order XXVI, Rule 4 has been filed by the learned counsel in a mechanical and unthinking manner. Such practice is to be deprecated in the interest both of the litigant and the legal system and also to further the Constitutional imperative of ensuring expeditious and inexpensive justice.

If it is the reason of his refusal, as it appears to be, then this is precisely the mischief what Rule 6 addresses. There is no other ground agitated before us for the change of the counsel that would make out a case for grant of special leave to substitute the counsel for drafting, filing and

¹ Federation of Pakistan v. Dr. Mubashir Hassan PLD 2011 SC 674 (several previous cases are referred to in this case); M/s. National Electric Co. v. Khalid Siddique PLD 2005 SC 405 (several previous cases are also referred to in this case).

² See Tamil Nadu Electricity Board v. Raju Reddiar AIR 1997 SC 1005.

³ PLD 2015 SC 247.

arguing the review petitions. Therefore, we see no valid reason or unavoidable circumstance to grant the special leave prayed for. Thus, the applications made under Order XXVI, Rule 6 of the Rules are rejected and consequently, the review petitions are not entertained.

Islamabad,
24th October, 2022.
Approved for reporting
Iqbal

Judge

Judge