IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL MISC. No. 57 OF 2025

(Application for grant of permission to draw the review petition on behalf of the Applicant-petitioner)

Sardar Imran Latif,

…Applicant-Petitioner

VERSUS

Sofia Mughal.

…Respondents

Appearances:

For the Applicant: Ch. M. Kaleem Afsar, Advocate.

For the Respondents: Nemo.

Date of hearing: 06.02.2025

ORDER:

***Raza Ali Khan, J*:-** This application has been filed under Rule 6 of the Order XLVI of the Azad Jammu and Kashmir Supreme Court Rules, 1978, seeking permission by the learned counsel to draft a review petition on behalf of the applicant-petitioner by replacing the earlier counsel. The learned counsel for the applicant-petitioner has sought permission to draft the review petition on the grounds that the matter needs consideration for the administration of justice. However, no reason whatsoever has been provided in the application to justify why the original Advocate namely Mr. *Muhammad Ibrar*, is unable le to represent the petitioner and why he is being replaced.

3. While arguing the instant application, the learned counsel for the Applicant-petitioner submitted that he seeks to to draft the review petition on behalf of the petitioner on the ground mentioned above, however, he failed to provide any reason or justification for his request.

4. We have heard the learned counsel for the Applicant-petitioner and examined the impugned judgment as well as the Azad Jammu and Kashmir Supreme Court Rules, 1978 *(hereinafter referred to as the '**Rules 1978**')*. Order XLVI of the Rules, 1978, stipulates that the same Advocate, who previously argued the case, must draft the review application and appear in support of it before the Court for specific reasons. This is because a review petition is not akin to a petition for leave to appeal or an appeal where the case is argued for the first time. The scope of review application is strictly

confined to the grounds mentioned in Order XLVI Rule 1 of the Rules 1978. As such, the original counsel is best positioned to assess whether those grounds are applicable in the case. Having been part of the hearing of the original proceedings, he possesses firsthand knowledge of arguments presented before the Court and reasoning that influenced the case decision. It is for this very reason that under Order XLVI of the Rules, 1978, the review application is to be fixed before the same Bench that delivered the judgment/order under review. It is evident that the same Advocate and the same Bench are best equipped to evaluate the grounds of review. Although, Rule 6 does not explicitly state the requirement of 'sufficient ground', but this does not imply that the Court discretion in this regard is arbitrary or automatic upon the mere filing of the application. This discretion, like all other discretions, must be exercised judiciously based on valid reasons, taking into account the specific circumstances of the case. Special leave to substitute a counsel in a review petition is granted only when the original counsel's appearance is rendered impossible due to unavoidable circumstances, such as death or incapacity due to mental or physical disability. However, even in such cases the substitution remains subject to the Court's permission. The practice of filing review applications by changing counsel without compelling reasons or unavoidable circumstances whether instituted by parties or their counsel is highly condemnable. This Court has already issued several pronouncements on this point, one of which is the ***Sana Latif's*** case [1], which is an authoritative and seminal

[1] Civil Misc. No. 57 of 2023, decided on 13.04.2023

judgment on the point. The relevant portion of the judgment is reproduced hereunder for better appreciation:

> "6. The only point involved in the case is the interpretation of Rule 6 of the Order XLVI of the Rules, 1978, which reads as under: -
> **"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."
> 7. The perusal of Order XLVI reveals that hearing of the review petition is not automatic but same is subject to various conditions. Under Rule 6 of Order XLVI, except with 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. In the light of the above-reproduced rule, the ground pleaded for permission to file and argue the case is hardly a ground for grant of permission. 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.
> 8. For reaching a just conclusion, we have gone through the various pronouncements of this Court as well as Supreme Court of Pakistan, wherein, the Courts have consistently formed the opinion that it has become the practice of filing frivolous review petitions that too after changing of the counsel. In the case reported as *Amjad Hussain versus Nazir Ahmad and others*[2], the Supreme Court of Pakistan observed that: -
> "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

[2] [PLD 2023 Supreme Court 22]

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."

In a case reported as *Muhammad Sabeel Khan vs. Muhammad Ayoub Khan and others*[3], this Court held as under: -

"The petitioner himself field a review petition under Order XLVI, Rule 6 of the Azad Jammu and Kashmir Supreme Court Rules, 1978. It is provided that every review petition shall be filed by the advocate who appeared at the hearing of the case in which the judgment or order sought to be reviewed, was made. The rule further provides that review petition may be drawn by an advocate other than the advocate who appeared at the hearing of the case in which the judgment or order sought to be reviewed with special leave of the Court."

In a case reported as *Muhammad Younas and others versus The State*[4], 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 is 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 CMA No. 649-L of 2021 4 argue a substantial question of law having public importance, would lead to no end to the litigation."

In a case reported as *Ghulam Rasul etc. versus Settlement and Rehabilitation Commissioner, Gujranwala etc*.[5] which reads as follows:-

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

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[3] [2015 SCR 1464]

[4] (PLD 2005 Supreme Court 93)

[5] (1980 SCMR 962)

> 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*[6]:-
> "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."

5. In the light of the law already enunciated by this Court, there are no compelling circumstances in the instant case to warrant a change of counsel. Moreover, the circumstances are not unavoidable since the previous counsel remain available and the ground cited in the application hardly justifies a substitution of a counsel at the review stage. If permission were liberally granted, it would not only contravene the applicable rules but also render them redundant and lead to endless litigation. In view of the above matter, there is no reason to allow this application, accordingly, it is dismissed.

JUDGE **JUDGE**

Muzaffarabad,
06.02.2025

[6] (AIR 1997 SC 1005)