IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Review Jurisdiction)

PRESENT:

RAZA ALI KHAN, J.
KHALID YOUSAF CHAUDHARY, J.

CIVIL REVIEW NO. 14 OF 2025
(In the matter of review from the judgment of this Court dated 26.02.2025)

Muhammad Akmal Khan and others.

…Petitioner(s)

VERSUS

Muhammad Taj and others.

…Respondent(s)

Appearances:

For the Petitioner(s):	Raja Wasim Younas, Advocate.
For the Respondent(s):	Raja Khalid Mehmood Khan, Advocate.
Date of hearing:	24.02.2026

ORDER:

***Raza Ali Khan, J*:-** The instant petition seeks review of the judgment dated February 26, 2025 rendered in Civil Appeal No. 77 of 2023. The controversy emanates from a suit for declaration instituted by the petitioner before the Court of Civil Judge on November 21, 2008, seeking multiple declaratory and ancillary reliefs. The suit was

contested through a written statement wherein the assertions of the petitioners were categorically traversed and preliminary objections including absence of cause of action, were raised. The learned trial Court, dismissed the suit vide judgment and decree dated November 30, 2010. Aggrieved thereby, the petitioners preferred an appeal before the learned District Judge on January 21, 2011. Vide judgment and decree dated April 30, 2012, the learned District Judge, reversed the findings of the trial Court, decreed the suit, restrained the respondents from interfering in the possession and *Araqdari* of the plaintiffs over the suit land, and nullified the order passed by the Revenue Authorities. The respondents assailed the said judgment before the learned High Court, which, accepted the appeal, set aside the judgment of the District Judge and restored that of the trial Court. The matter was thereafter brought before this Court which vide judgment dated February 26, 2025, dismissed the appeal on the ground of incompetency.

2. Before adverting to the merits of the review petition, it is necessary to address the application filed by Mr. Masood A. Sheikh, the learned Advocate, seeking leave to appear and argue the review petition on behalf of the petitioners. Rule 6 of Order XLVI of the Supreme Court Rules, 1978, unequivocally mandate that, save with special leave of the Court, no review shall be entertained unless drawn and prosecuted by the Advocate who appeared at the original hearing culminating in the impugned judgment or order. Rule further restricts audience to any other counsel unless such requirement is expressly dispensed with by the Court. The prescription is mandatory in character and admits departure only upon grant of special leave for sufficient

cause. The principle stands authoritatively settled in *Sana Latif v. Mst. Sadaqat Abbasi*[1], wherein the scope and import of the said Rule were delineated with clarity.

> 4. We have heard the learned counsel for the petitioner and gone through the impugned judgment as well as the Azad Jammu and Kashmir Supreme Court Rules, 1978 *(hereinafter to be referred as* '***Rules 1978***'). Order XLVI of the Rules, 1978, 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 equivalent 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 limited to the grounds mentioned in Order XLVI Rule 1 of the Rules 1978. 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 XLVI of the Rules. It is not hard to understand that the same Advocate and the same Bench can best appreciate the grounds of review. 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

[1] [2023 SCR 435]

to some unavoidable circumstances, such as the original counsel is dead or unable to appear before the Court due to some mental or physical disability but that too is subject to the permission to the Court. 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.

5. In the instant case, there is no ground whatsoever, mentioned in the application for a grant of special leave to argue in the review petition. The ground for permission is mentioned paras No. 1 & 2 of the application, which is reproduced: -

"1. That the humble advocate/applicant has engaged counsel in the above-mentioned review petition seeks permission to draft the review petition before this Honorable Court.

2. That the matter in hand needs the judicial observance/ consideration again for kind administration of justice, thus seeking the permission to draft the case."

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."

3. In the case at hand, the application is conspicuously devoid of any cogent justification, particularly no exceptional circumstance has been pleaded or established warranting departure from the mandatory rule. The request is thus unsupported by cause and therefore, cannot be acceded to. Consequently, the application filed by Mr. Masood A. Sheikh, learned Advocate, seeking leave to appear on behalf of review petitioners stands dismissed.

4. During the course of proceedings, the Court inquired whether the original counsel, Raja Wasim Younas, who had argued the appeal and filed the present review, was available to advance submissions. Upon being called, he declined to argue the matter on the premise that he had entrusted the brief to Mr. Masood A. Sheikh, the learned Advocate, for submissions before the Court. Such conduct mistakenly reflects unwillingness to prosecute the review in terms of governing rules. In these circumstances, although the application seeking substitution of counsel does not merit acceptance, we have nonetheless examined the grounds urged in the review petition in order to satisfy ourselves whether any error apparent on the face of the record, misreading of evidence, or reviewable infirmity exists in the judgment dated February 26, 2025. Upon careful consideration, we find that the review petition merely seeks re-agitation of matters already urged and decided. No error apparent on the face of the record has been demonstrated.

The grounds neither disclose discovery of new and important matter nor establish any patent illegality or jurisdictional defect warranting exercise of review jurisdiction. What is sought has already been settled by this Court in a case reported as *Kamran Ali & others vs. Abdul Qudoos & others*[2]. The same is reproduced hereunder: -

> "The Supreme Court of AJ&K has been conferred jurisdiction to review any judgement or order as passed by it under Article 42-D of the AJ&K Interim Constitution, 1974. It would be advantageous for us to reproduce here the said article, which is as under:
>
> "42-D. The Supreme Court shall have powers, subject to the provisions of an Act of the Assembly and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it."
>
> A cursory perusal of the above provision of the AJ&K Constitution, 1974, reflects that the Supreme Court has got powers to review any judgment or order passed or made by it, subject to the provision of an Act of Assembly and of any rules made by the Supreme Court. Article 42-A (4) of the AJK Interim Constitution, 1974, postulates that the Supreme Court may make rules for regulating the practice and procedure of the Court after making consultation with the Government. Article 42-A, which is as under:
>
> "(4) Subject to the Constitution and Law, the Supreme Court may, in consultation with the Government, make rules regulating the practice and procedure of the Court."
>
> The Supreme Court of AJK, while exercising the powers so conferred to it under Article 42-A (4) of the Constitution has framed the rules for regulating its practice and procedure, namely, AJ&K Supreme Court Rules, 1978. Resorting back to Article 42-D of the Constitution whereby the

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[2] [2021 SCR 501]

Supreme Court has been given powers to review its any judgment or order, subject to the provisions of an Act of the Assembly and the Rules made by the Supreme Court, the AJ&K Legislative Assembly has enacted an Act, namely AJK Supreme Court (power of Review) Act, 1980, the relevant provision is reproduced as under:

"Section 2. Supreme Court to have power to review Judgements and orders: The Supreme Court of Azad Jammu and Kashmir shall have power, subject to the provisions of any law and of any rules made by the Supreme Court, to review any judgment pronounced or any order made by it."

Moreover, besides supra section 2 of the AJK Supreme Court (Powers of Review) Act, 1980, the powers of the Supreme Court to regulate and exercise the practice and procedure in context of its review jurisdiction, Order XLVI, has been framed in the Supreme Court Rules, 1978. For brevity, only rule 1 of Order XLVI, which is relevant in the instant matter is reproduced herein:

"1. Subject to the law and the practice of the Court, the Court may review its judgment or order in a civil proceeding on grounds similar to those mentioned in Order XLVII, rule 1 of the Code, and in a criminal proceeding on the ground of an error apparent on the face of the record."

The aforementioned rule postulates that this Court may review its judgment or order in a civil review petition on grounds akin to the grounds as mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908, and in a criminal review petition on the ground of an error apparent on the face of the record. The relevant provisions of Code of Civil Procedure, 1908, are as follows:-

"1. Application for review of judgment.- (1) Any person considering himself aggrieved,—

(a) …….

(b) …….

> (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.
>
> (2) ……..”
>
> 6. It appears that the learned counsel for the petitioner wants decision of the case according to his wishes, which is not permissible under law. It has been held by this Court a number of times that a view formed by interpretation of law and elucidation of facts would not be deemed to be wrong simply for the reason that a view contrary to it could also be taken or it was possible to be taken.”

Review jurisdiction is narrow and exceptional; it cannot be invoked to substitute a different view or to reargue the case.

5. Another point has also been raised by the review petitioners in the grounds of the review petition, namely, that the point on which the appeal has been dismissed could only have been taken at the time of PLA, and that once leave was granted, the appeal could not have been dismissed on that point. This contention is also misconceived. This Court has already settled this proposition in a number of pronouncements that a question of law which goes to the root of the case can be considered by this Court at any stage, even suo motu. In this regard, this Court has recently passed a judgment titled *Muhammad Hussain v. Rabia Bibi and others*, wherein it has been held as under: –

"The argument of the learned Advocate, representing the appellant that the objection regarding the non-maintainability was not raised in the concise statement as well as at the time of hearing in the PLA, is misconceived because it is decades long settled position of law that law point, which goes into roots of case can be considered by this Court even suo moto. Our this view is fortified by the judgment of this Court delivered in case reported as *Sardar Muhammad Naseem Khan vs. Brig. (R) Muhammad Akbar Khan & 7 others* [2003 SCR 142], wherein this Court observed as under:-

"9. It was also argued by the learned counsel for the petitioner that the point raised with regard to the maintainability of the writ petition before the High Court on the ground of non-impleadment of the party was not taken in the pleadings, therefore, could not be allowed to be raised at the time of arguments. The point has no substance in view of law settled by this Court in number of cases. A few may be referred as Syed Muhammad Akram Shah vs. Chairman Allotment Committee [Civil Appeal No.7 of 1995 decided on 24.7.1995], wherein it was observed that the Allotment Committee had the powers to make allotments under the relevant law. The same being a legal person was not impleaded as a party. The writ petition was incompetent despite the fact that no objection was raised in this regard. It was also observed that such an objection could be gone into by the Court suo-motu without any objection having been raised from the opposite side."

5. As we have reached the conclusion that this appeal has been filed incompetently, therefore, there is no need to dilate upon the merits and demerits of the case as the same would be a futile exercise."

In view of the above, this review petition stands dismissed with no order as to costs.

JUDGE **JUDGE**

Mirpur,
24.02.2026