

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

Before Judge in Chambers:

Justice Syed Hasan Azhar Rizvi

Civil Misc. Appeal No.37/2026

(against the order dated 03.07.2026 of the Registrar, returning the constitution petition of the appellant as being not entertainable under the Rules)

*Managing Director, Oil & Gas Development
Company Limited, Islamabad*

.....Appellant(s)

Versus

*The Registrar, Federal Constitutional Court,
Islamabad & another.*

.....Respondent(s)

For the Appellant(s) : Mr. Khurram Mumtaz Hashmi, ASC

For the Respondent (s) : Nemo for the respondent No.1.

The respondent No.2 is *in person*
along with Mr. Muhammad Bashir
Khan, ASC

Date of Hearing : 30.09.2026

O R D E R

Syed Hasan Azhar Rizvi, J.— Through this miscellaneous appeal, filed under Order V, Rule 3 of the Federal Constitutional Court (Practice and Procedure) Rules, 2026, the appellant challenges the office objection dated 03.07.2026 pursuant to which its miscellaneous application seeking recall of the order dated 11.05.2026 and restoration of Civil Review Petition No.667 of 2025 was returned. The said application was filed under Order XXXV, Rules 1 and 6 of the Supreme Court Rules, 2025 (**‘Rules of 2025’**), as adopted by this Court and in force at the relevant time, read with Article 175G of the Constitution of the Islamic Republic of Pakistan, 1973 (**‘Constitution’**). Accordingly, the validity of the office objection shall be examined with reference to the Rules of 2025.

2. The present controversy originates from Writ Petition No.4096 of 2021, filed by Shakeel Ahmed Kayani, the respondent No.2 (**‘private respondent’**), against the appellant. The Islamabad High Court, Islamabad (**‘High Court’**), dismissed the petition by judgment dated 02.02.2022. The private respondent challenged that judgment through Civil Petition for Leave to Appeal No.1174 of 2022 before the Supreme Court. By judgment dated 17.09.2025, reported as *Shakeel Ahmed Kayani v. Managing Director/Chief Executive Officer, Islamabad and another* (**2026 SCMR 449**), the Supreme Court converted the petition into an appeal, allowed it and set aside the judgment of the High Court. The private respondent was held entitled to additional pension under section 5 of the Oil and Gas Development Corporation (Re-organization) Ordinance, 2001, read with Regulation 15(1A) of the Oil and Gas Development Corporation Pension and Gratuity Regulations, 1985.

3. The appellant sought review of that judgment through Civil Review Petition No.667 of 2025 (**‘Review Petition’**). During its pendency, this Court was established through the Constitution (Twenty-Seventh Amendment) Act, 2025. Clause (1) of the newly inserted Article 175F conferred upon this Court jurisdiction, *inter alia*, to hear appeals from judgments or orders of the High Courts made under Article 199, subject to the grant of leave to appeal. Clause (2) of the same Article further provides that all petitions for leave to appeal, appeals and review petitions to which clause (1) applies, as well as all other proceedings falling within the jurisdiction of this Court, which had been filed or were pending before the Supreme Court immediately prior to the commencement of the aforesaid Amendment Act, shall stand transferred to this Court. Consequently, the present Review Petition, being a matter falling within the ambit of Article 175F *supra*, stood transferred to this Court and was thereafter fixed before a Bench for adjudication in accordance with law. The Review Petition was, however, dismissed

as being infructuous by a two-member Bench of this Court vide order dated 11.05.2026, which reads as follows:

‘On the last date of hearing, learned counsel for the petitioners sent a request for adjournment, which was allowed, and the matter was fixed for today and once again, an application for adjournment has been sent. Learned AOR was present in Court and, in his presence, learned counsel for the respondent has stated that the order has been complied with and the dues have also been paid to the respondent, as is evident from the compliance report. In this view of the matter, this review petition stands dismissed as having become infructuous.’

Emphasis added.

The appellant subsequently filed the miscellaneous application seeking recall of that order and restoration of the Review Petition. The Registrar returned the application as not entertainable under Order XXVII, Rule 8, read with Order X, Rule 2 of the Rules of 2025. Hence, this appeal.

4. The learned counsel for the appellant contended that compliance with the judgment dated 17.09.2025 was undertaken without prejudice to the appellant’s rights in review and neither constituted waiver nor rendered the Review Petition infructuous. He submitted that a written request for adjournment had been made because the counsel was unable to appear, while the Advocate-on-Record (**‘AOR’**) present in Court was not in a position to address the legal consequences of compliance. He further alleged that the statement made by the learned counsel for the private respondent had misled the Court into disposing of the Review Petition. Relying upon Razia Aslam v. Registrar, Federal Constitutional Court of Pakistan (**Civil Miscellaneous Appeal No.4 of 2026**), he maintained that the application’s maintainability required judicial determination and could not be conclusively decided by the Registrar.

5. Conversely, the learned counsel for the private respondent submitted that the AOR was present when the order was dictated in open Court, acknowledged compliance and raised no

objection to the disposal of the Review Petition. He argued that the miscellaneous application, notwithstanding its description as an application invoking inherent powers, sought reconsideration of an order finally disposing of the first review and was, therefore, a second review expressly prohibited by the Rules of 2025.

6. Heard. Record perused.

7. The question in this appeal is whether the miscellaneous application seeks correction of a procedural defect permitting recall or, in substance, reconsideration of the judicial conclusion recorded in the order dated 11.05.2026. Its character must be determined from the grounds urged and the relief sought, rather than its designation or the provisions mentioned in its title. As Order XXVII, Rule 8 expressly provides that, after *final disposal* of the first application for review, no subsequent application for review shall lie to the Court and, consequently, shall not be entertained by the Registry. The provision refers to *final disposal*; it does not confine the prohibition to dismissal after adjudication of every ground raised in the first review. Further, Order X, Rule 2, subject to the provisions governing review, likewise prohibits alteration of or addition to a judgment pronounced in open Court, except to correct a clerical or arithmetical mistake or an error arising from an accidental slip or omission. Read together, these provisions prevent a concluded review from being reopened through a subsequent application seeking substantive reconsideration.

8. Examined in the light of the foregoing principles, the order dated 11.05.2026 did not dismiss the Review Petition merely on account of non-appearance or for want of prosecution. Rather, the Bench took notice of the renewed request for adjournment, the presence of the AOR and the compliance report placed before it, and thereafter concluded that the Review Petition had become *infructuous*. The appellant now contends that compliance with the

judgment did not have the legal effect of rendering the Review Petition infructuous. This contention directly calls into question the conclusion reached by the Bench. Its acceptance would necessarily require reconsideration of that conclusion, setting aside the final order disposing of the Review Petition and restoring the petition for adjudication. The relief sought, therefore, is not confined to the correction of an accidental omission or the rectification of a procedural default; *in substance*, it seeks reconsideration of a judicial determination made while exercising review jurisdiction.

9. The matter may also be examined from another perspective. The question in the present appeal is not whether the Bench was correct in treating compliance with the judgment as rendering the Review Petition infructuous; rather, it is whether the grounds subsequently advanced by the appellant disclose an independent procedural defect warranting recall of that order. In this regard, the absence of the private counsel, though relied upon by the appellant, did not leave it unrepresented, as its AOR was present before the Bench. Nor does such absence, by itself, constitute a procedural defect capable of sustaining the relief sought. As already noted, granting that relief would necessarily require the Court to revisit the conclusion regarding the effect of compliance of the earlier judgment on the Review Petition. The plea based on the absence of the private counsel, therefore, does not provide an independent basis for recall but ultimately leads back to the appellant's substantive challenge to the judicial determination already made by the Bench.

10. The appellant's further contention that only its AOR was present and that he was not in a position to address the legal consequences of compliance may be examined in the light of Order IV of the Rules of 2025. Rule 6 thereof provides that no advocate other than an AOR may appear or plead in any matter unless instructed by an AOR, while Rule 15 reserves to the AOR the

entitlement to act for a party in proceedings before the Court. Read together, these provisions clearly establish that the principal responsibility to act, appear and plead on behalf of the party is that of the AOR. Reference in this regard may be made to Azmat Towellers (Pvt.) Ltd., Multan v. Khalid Anwar and others (PLD 2022 SC 370). His presence before the Bench, therefore, cannot be regarded as merely formal or equated with an absence of legal representation. Consequently, the inability of the private counsel to attend did not, by itself, leave the appellant unrepresented or require the Bench to adjourn the proceedings. At the same time, the presence of the AOR does not imply that the appellant conceded the legal effect of compliance. The material point, for present purposes, is that the absence of the private counsel did not constitute an independent procedural defect warranting recall and, therefore, does not alter the substantive character of the relief sought.

11. The reliance placed upon Razia Aslam supra is distinguishable in this respect. That case concerned objections which required a determination as to whether an original constitutional petition raised a question of public importance with reference to the enforcement of Fundamental Rights. Such objections necessarily involved substantive constitutional adjudication. The position here is materially different. The relevant rule expressly directs the office not to entertain a subsequent application for review once the first review has been finally disposed of. The function of the office in giving effect to this express prohibition is fundamentally different from determining the merits of a constitutional claim. In the circumstances of the present case, treating the application, having regard to its substance, as a subsequent review merely gives effect to an express procedural bar; it neither authorises the Registrar to examine the correctness of the judicial order sought to be recalled nor requires him to adjudicate upon the underlying dispute. Razia Aslam, therefore, cannot be read

as requiring the office to register an application which falls within such an express prohibition. To sum up, the miscellaneous application filed by the appellant involved not a question of maintainability, but one of entertainability. The objection raised by the Registrar is, therefore, properly understood as an objection to the entertainability of the application on the ground that it is barred by Order XXVII, Rule 8 of the Rules of 2015. Reference in this regard may be made to Hasnat Ahmad Khan v. Institution Officer (2010 SCMR 354).

12. There is no doubt that Order XXXV, Rule 1 empowers the Court, upon sufficient cause being shown, to relax procedural requirements and issue such directions as may be necessary in matters of practice and procedure, while Rule 6 preserves its inherent powers to secure the ends of justice and prevent abuse of its process. These powers, however, are procedural and ancillary in nature and must be exercised consistently with the express provisions governing review. They cannot be invoked to circumvent the prohibition against a subsequent review by seeking, under the guise of recall, reconsideration of a judicial determination already made in review jurisdiction. Nor can they be invoked to override or defeat an express provision of the statute. Reference in this regard may be made to Federation of Pakistan through the Secretary, Ministry of Law and Justice, Islamabad v. Supreme Judicial Council (PLD 2024 SC 698). Furthermore, the Rule 6 of Order XXXV (almost identical to Rule 6 of Order XXXIII of the Supreme Court Rules, 1980) can be pressed into service only in a matter which is competently filed before Court but it does not give an independent right to initiate proceedings. Reference in this regard may be made to Mehr Zulfiqar Ali Babu and others v. Government of the Punjab (PLD 1997 SC 11).

13. At the same time, the mere description of an application as one for ‘recall’ or ‘restoration’ is not determinative; the Court must

examine the nature of the grounds raised and the substance of the relief sought. Where the order is challenged on account of an independent procedural defect affecting the proceedings, the question of recall may legitimately arise. Where, however, the relief sought can be granted only by revisiting the reasoning or conclusion of the Bench on the merits, the application assumes the character of a further review, irrespective of the form in which it is presented. In the present case, no independent procedural defect warranting recall has been established. The application is, *in substance*, in the nature of a second review, as the relief sought would require reconsideration of the conclusion whereby the Review Petition was dismissed as *infructuous*. The application, therefore, cannot derive support from Rules 1 and 6 to reopen that judicial determination. The objection raised by the Registrar is, accordingly, in conformity with the Rules. Reference in this regard may usefully be made to Ahmad v. Abdul Aziz (1991 SCMR 234), wherein a two-member Bench of the Supreme Court, while deciding a civil miscellaneous appeal, made observations to a similar effect.

14. Consequently, the civil miscellaneous appeal is dismissed and the office objection dated 03.07.2026 is maintained. Nothing in this order shall be construed as reconsideration of the merits of the judgment dated 17.09.2025 of the Supreme Court or the order dated 11.05.2026 of this Court. No order as to costs.

Judge

Islamabad, the
30th September, 2026.

APPROVED FOR REPORTING
*M Farhan/**