

OC Appeal 5/2015

Order No. 12, dated 04.05.2016

Today is fixed for hearing of Appeal. One hazira on behalf of the Appellant Muhammad Khusru has been filed. One time petition has been filed on behalf of the Respondent No 1.

Perused the materials on record. It appears to me that the Ld. Advocate who has filed time petition has no power to file such petition due to lack of Vokatnama. It appears to me that on 11.03.2016 one petition under Order 22 rule 3 read with section 151 CPC had been filed before the court without any Vokatnama. In the said petition it has been mentioned that the original Appellant died. It is found that the petitioners of the instant petition U/O 22 R.3 r/w sec 151 CPC claiming themselves as the legal heir of the Appellant filed the said petition with the prayer for substituting themselves in place of the Appellant but it is seen that those two alleged legal heirs of the Appellant as per such petition did not file any Vokatnama.

It appears to me that on 11.03.2016 the said petition was not disposed off since the regular P.O of this court was on leave. Thus the said petition is lying with this record for disposal.

Now in view of so many irregularities in the matter of filing such petition, this court opines that such petition under U/O 22 R. 3 r/w s.151 CPC is not maintainable and also not acceptable. Thus such petition is rejected.

It is evident from the record that some of the respondents in spite of having knowledge about this Appeal and also taking time to file Vokatnama to appear, actually did not enter their appearance before this court in this Appeal.

It is found that information was given to this court to the effect that the Appellant Muhammad Khusru died on 17.01.2016 but till today no proper step has been taken in respect of substitution of the Appellant. Fact remains that the statutory period of taking steps for substitution has already been elapsed.

In view of the situation, it is found that the instant Appeal has already been abated.

Let it be noted in the relevant register.

Let the LCR be returned along with a copy of this order.

***Dictd. And Corrected
by me :***

***Addl. District Judge,
3rd Court, Darjeeling.
4.05.2016***