

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

A.S.M.P.No.1365 of 2017

IN/ AND

A.S. No. 2810 of 2004

JUDGMENT:

This application is filed by the second respondent in the appeal suit under Order XXII Rule 11 C.P.C read with Order XXII Rule 3 C.P.C read with Section 151 C.P.C., requesting to dismiss the appeal suit on the ground that despite the death of the sole appellant on 23.06.2015, no steps have been taken to bring on record his legal representatives and therefore, the appeal automatically abated on the expiry of 90 days period from the date of death of the appellant.

On 30.01.2018, learned counsel for the petitioner/second respondent submitted that the appeal pending before this Court is liable to be dismissed as abated, in view of the fact that no steps are taken by the legal representatives of the deceased sole appellant to come on record as appellants and prosecute the appeal. However, learned counsel, who formerly appeared for the appellant, sought time.

Today, there is no representation. The law on the point is well settled that on the death of a party to the appeal, if no application is made by the party concerned to the appeal or by the legal representatives of the deceased on whom the right to sue has devolved for substitution of their names in the place of the deceased party within 90 days from the date of death of the party, such appeal abates automatically on expiry of 90 days from the date of death of the party. On the 91st day, there is no appeal pending before the Court, as the appeal on that day stands dismissed as abated.

In that view of the matter, A.S.M.P.No.1365 of 2017 is ordered and the Appeal Suit is dismissed as abated. No order as to costs. Miscellaneous petitions, pending if any, also shall stand dismissed.

M. SEETHARAMA MURTI, J

Date: 05.02.2018
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