

FOR THE RESPONDENTS: Haji Ch.Muhammad Afzal, Advocate.

Date of hearing: 29.03.2017

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal under Order V, Rule 3 of the Azad Jammu and Kashmir Supreme Court Rules, 1978, has been filed for setting aside the order passed by the Additional Registrar of this Court dated 07.01.2017, whereby the application filed by respondent No.1, herein, for impleadment of the legal heirs of one Qurban Hussain (deceased), has been accepted.

2. The facts necessary for disposal of this appeal are that respondent No.1, herein, filed an appeal before this Court on 14.05.2016. In the line of the respondents the appellant, therein (WAPDA), impleaded Qurban Hussain as respondent. The respondents, therein, taken the stance that Qurban Hussain

had passed away on 15.11.2015, before filing of appeal, therefore, the appeal having been filed against a dead person is liable to be dismissed. On 30.09.2016, the appellant, therein, moved an application for impleading the legal heirs of deceased in the line of the respondents. The Additional Registrar of this Court after necessary proceedings vide impugned order dated 07.01.2017, accepted the application, hence, this appeal.

3. Sardar Muhammad Azam Khan Advocate, the learned counsel for the appellant argued that the legal representative of a deceased person can only be appointed if the deceased was a party in the appeal. In the instant case, Quran Hussain legally was non-existent to be impleaded as respondent at the time of filing of appeal because he had died when the appeal was filed. He added that appellant, therein, instead of filing the

application for amendment in the memorandum of appeal filed an application for impleadment of the legal heirs of Qurban Hussain which was liable to be dismissed but the learned Additional Registrar has not appreciated this aspect of the case in a legal manner. He contended that the application for bringing on record the legal heirs of deceased was also hopelessly time barred but this aspect of the case escaped the notice of the learned Additional Registrar while passing the impugned order.

4. On the other hand, Haji Chaudhary Muhammad Afzal, Advocate, the learned counsel for the respondents strongly opposed the arguments advanced by the learned counsel for the appellant. He contended that respondent No.1, herein, was not aware of the fact that Qurban Hussain had died. After having knowledge, he filed application within

prescribed period of limitation; therefore, the learned Additional Registrar was fully justified to accept the application. He added that the learned Additional Registrar passed a speaking order which is not open for interference by this Court.

5. We have heard the arguments of the learned counsel for the parties and gone through the record made available along with the impugned order. Admittedly, the appeal was filed by respondent No.1, herein, on 14.05.2016, whereas, Qurban Hussain had died on 15.11.2015, prior to the filing of appeal, meaning thereby, he did not exist as respondent at the time of filing of appeal. The learned counsel for the appellant, herein, has rightly argued that the proper course was to move application for amendment in the memo of appeal instead of filing application for bringing on record the legal representative of

the deceased. The appeal has been filed against died person and under law appeal against a dead person is not competent. Moreover, admittedly the application filed for bringing on record the legal heirs of deceased was hopelessly time barred and the reasoning assigned by the learned Additional Registrar in this regard is not plausible in nature. The impugned order has been passed in deviation of the relevant law on the subject which is not maintainable.

In view of the above while accepting this appeal the impugned order of the Additional Registrar dated 07.01.2017, is hereby set aside. Consequently, the application filed by respondent No.1, herein, for bringing on record the legal heirs of Qurban Hussain (deceased), stands dismissed.

Mirpur, **JUDGE** **CHIEF JUSTICE**
_.03.2017

Date of announcement: 01.04.2017