

**THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO**

**C.R.P.1313 OF 2002**

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**C.M.A.850 OF 2002**

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**ORAL COMMON ORDER**

Both the matters arise out of the common order passed by the Additional Judge, City Small Causes Court-cum-VI Additional Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.1309 of 1989.

The suit O.S.No.1309 of 1989 was one filed for partition of the properties and while the suit was pending the second defendant died. Subsequently, in the year 1996 there was some proposal for settlement of the disputes and the legal representatives could not be brought on record and therefore I.A.No.4 of 2002 was filed to condone the delay of 1989 days in bringing the legal representatives on record and also to set aside the abatement of the suit against the second defendant. The lower court on consideration of the rival contentions dismissed both applications.

The learned counsel for the petitioner represents that the suit is one filed for partition and after the death of the second respondent the suit was dismissed for default and it was again restored on 05-12-2001 in I.A.No.373 of 1998. The suit was originally dismissed for default on 11-11-1998. The lower court taking into consideration that there is an abnormal delay and it was not properly explained has dismissed the application for condonation of delay. Evidently, when a suit for partition is pending, the rights of the parties are involved and apart from the deceased-second defendant, the other defendants are already on record to pursue the rights of the parties. Even if the delay as sought to be explained by the petitioners is not acceptable according to the lower court but since the rights of the parties are involved in immovable properties and as earlier itself in April, 2000 I.A 345 of 1999 was filed for seeking condonation of delay in filing the application to bring the legal representatives on record and as it was dismissed on the ground that the suit was dismissed for default and subsequently also another application was dismissed, it cannot be stated that the petitioner was not diligent in prosecuting the case and there were every efforts to bring the legal

representatives on record but for the supervening of the dismissal of the suit and also the proposed talks of compromise, which were said to have taken place.

Therefore, in view of the above circumstances and keeping in view particularly the interest of all the parties for determination of the rights in the suit for partition which has already stayed for long time, I feel ends of justice would require if the order of the lower court is set aside. Accordingly, the delay is condoned and the order of abatement is set aside and respondent Nos.5 to 8 are added as legal representatives of the second defendant. The lower court shall proceed with the trial of the suit expeditiously and dispose of the same within six (6) weeks from the date of receipt of a copy of this Order.

In the result, both CRP and CMAs are allowed. No costs.

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**N.R.L.NAGESWARA RAO,J**

09-06-2011  
TSNR