

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO.845 OF 2016
WITH
CIVIL APPLICATION NO.1661 OF 2016
IN
SECOND APPEAL NO.845 OF 2016**

Sau. Layavva Shankar Koli

...Appellant

vs.

Shri. Gangaram Shripati Sutar (Deceased
Thr. Lrs) And Ors.

...Respondents

....

Mr. Nikhil N. Pawar, for the Appellant.

Mr. Bhushan Walimbe, for Respondent Nos. 1A and 1B.

.....

CORAM : S.C. GUPTE, J.**DATED : 7 MARCH 2017****P.C. :**

. This Second Appeal challenges a judgment and order passed by the District Court at Islampur in Miscellaneous Civil Application No.35 of 2015. By this miscellaneous civil application, the Applicant (Appellant herein) sought condonation of a delay of 8 years and 5 months in filing the first appeal. By the impugned judgment and order, the application was rejected by the District Court. It is submitted by learned Counsel for the Appellant that there was no service of the writ of summons on the Appellant. It is submitted that the writ of summons was accepted by Respondent No.2 (Original Defendant No.2), who was the husband of the Appellant herein (Defendant No.1 to the suit). It is submitted that

the Appellant was not residing with her husband, but that she was residing separately since 1982 and, as such, she had no knowledge of the suit or the judgment and decree passed by the Trial Court. The judgment of the Trial Court indicates that the Appellant herein (Defendant No.1 to the suit) was represented by an Advocate. The judgment clearly notes that Defendant No.1 appeared in the suit but failed to file any written statement and that the suit proceeded against her accordingly without the written statement as per the order dated 11 January 2001. It is also pertinent to note that, whilst the suit mortgage was executed in favour of the Appellant on 19 June 1981, she had assigned the mortgage to her husband, Defendant No.2, on the same terms and conditions on 2 April 1982. It is also pertinent to note that in a case pending before the Co-operative Court at Sangli, on 21 July 2000, the Appellant was examined by her husband Shankar in connection with a dispute regarding dues to be received for sale of sugarcane. These undisputed facts are inconsistent with any suggestion that the Appellant had separated from her husband, Defendant No.2 herein. No substantial question of law accordingly arises, in the facts of the case, from the impugned judgment and order of the District Court, rejecting the Appellant's prayer for condonation of a long delay of 8 years and 5 months. The Second Appeal is, accordingly, dismissed.

2. In view of the dismissal of the Second Appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)