



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO. 74 of 2023

.. Appellant

Versus

1.

2.

.. Respondents

3.

...

Mrs. Deepa Chawan, Sr. Advocate appointed as amicus curiae with Mr. Ravindra R. Chile for the Appellant.

Dr. Pradip Chavan with Ms Shweta Borhade i/b Pradip Chavan and Associates for the respondent.

Ms Warsha @ Eleekusumchand Javeri- Appellant in person is present.

**CORAM : BHARATI DANGRE &
MANJUSA DESHPANDE, JJ**
DATED : 6th May, 2026

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JUDGMENT (Per Bharati Dangre, J):-

1. The Appeal raises a specific question of law which was formulated by our order dated 16/1/2026 to the following effect:-

(1) Whether a Decree could be enforced against the estate of the late husband, by a divorcee wife, when a liability to pay a sum of monthly maintenance to the wife, is provided under the Decree is of divorce?

2) Whether the right to seek enhancement of permanent maintenance can be enforced against the estate of the late husband?

2. The above questions arise in the facts which are crystallised in the factual narration as set out hereinafter:-

(a) The appellant was married to under the Special Marriage Act, 1954, on 29/1/1974.

There is no issue out of the said wedlock and they were estranged since 1977.

(b) filed a petition seeking divorce in the year 1980, whereas the appellant filed a petition for maintenance in Bombay City Civil Court in the year 1983. Both the proceedings were heard and the appellant's petition seeking maintenance was dismissed, however, at the same time, the decree for divorce was granted and the husband was directed to pay to the appellant a sum of Rs.6,000/- per month towards

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maintenance.

(c) The appellant filed an Appeal challenging the dismissal of the maintenance petition, whereas the husband also raised a challenge to the order directing him to bear the monthly maintenance towards his wife.

On 13/6/2005, both the Appeals in form of Family Court Appeal were dismissed in default by the High Court.

expired on 15/3/2012 intestate without being remarried, leaving behind his sister and respondent no.1 who since deceased, is represented by his legal heirs in the present Appeal.

It is worth to note that the appellant wife has not remarried.

(d) had filed a Testamentary Petition for the grant of Letter of Administration in respect of the estate of his late brother, which was granted by this Court on 6/6/2014. The appellant, filed a Miscellaneous Application before the Family Court for enhancement of monthly maintenance and she sought two reliefs : (a) recovery of arrears of maintenance as per 1999 decree by the Family Court dissolving the marriage and directing payment of maintenance and (b) enhancement of the monthly maintenance amount payable to her.

The application was strongly contested by the legal heirs of her deceased husband by filing written statement.

(e) On 9/2/2023, the Family Court passed the impugned

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order granting the first relief in favour of the appellant, holding that she is entitled to recover arrears of maintenance from the estate of the deceased. However, her prayer for enhancement of maintenance came to be rejected, by holding that no case was made out by her warranting enhancement in her maintenance, and that she had considerable resources of her own sufficient for living in the same status in which she lived in the past. However, for recovery of sum of Rs.6,000/- if it was not paid through the estate of her husband during her life time, it was held that a charge can be created upon the properties of late :

This background has resulted in filing of the present Appeal by the appellant wife in which we have formulated the legal issues which we have reproduced above.

3. In the wake of the formulation of the aforesaid points for consideration and since the appellant \ chose to mark her appearance in person, we deemed it appropriate to request learned senior counsel Ms. Deepa Chavan to assist us, since a question of great legal significance fell for our consideration.

The respondents are represented by Advocate Dr. Pradeep Chavan, who strongly supported the impugned judgment of the Family Court and fairly conceded to the fact that as far as the maintenance amount payable to the appellant is concerned, that is permitted to be recovered through the estate, of her late husband but he strongly contested the claim for enhancement of maintenance.

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At our request, _____ adeptly assisted us in determination of the issues and she also tendered her submissions in writing, along with the supporting precedents on which she placed reliance in the backdrop of the provisions of the Special Marriage Act, 1954, as the marriage between the parties was solemnized under the said statute.

Focusing her attention on Section 37 of the Act, she would submit that the provision provide for permanent alimony and maintenance to the wife and her emphasis is on the power conferred by the said section, enabling the Court to exercise jurisdiction both at the time of passing of any decree and also at any time subsequent to the decree. It is therefore submitted by her that there is no embargo under the provision for grant of maintenance post passing of the decree of divorce. She would emphasize on the use of the word 'shall' used in sub-section (1) mandating the husband to secure to the wife, the maintenance and support, and this according to her, can be secured, if necessary, by creating a charge on the husband's property qua the quantum of maintenance for the life time of the wife.

In granting the relief under sub-section (1) of Section 37, it is the submission of Ms. Chavan that the Court would give credence to the property owned by the wife, the husband's property and his ability, conduct of the parties and circumstances of the case and post passing of the order under the said provision, has permitted variation, modification or

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rescinding of any order on the occurrence of the change of circumstances, and this power according to her, is conferred specifically by the legislation by incorporating sub-section (2). The only embargo, according to her, imposed on the wife's claim for maintenance, is that her entitlement to receive it continue so long as she does not remarry and is living a chaste life contemplated under the said section.

4. Ms.Chavan has focused upon the intention of the legislature in incorporating Section 37, and it is her specific submission that it is imperative for the Court to consider the policy enshrined therein for the benefit of the wife and as the legislature intended to create a protective arch of financial security for the wife, the Court shall give full effect to the underlying intention and there is no scope for the Court to take up on itself the task of amending or altering the statutory provision. According to her, the wording used in the provision are precise, and it is imperative to expound those words in their ordinary and natural sense and the said provision deserve an interpretation, according to Ms. Chavan, by applying the rule of literal construction.

As far as the first question of law which we have formulated is concerned, according to Ms. Chavan, the same is no longer *res integra* and the issue whether maintenance claim would ensure post death of the husband, is settled to the effect that maintenance would be continued to be paid from the estate of the late ex-husband and she would place reliance upon

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the decision of the Apex Court in case of **Mrs. Aruna Basu Mullick Vs. Mrs. Dorothea Mitra**,¹ wherein it is categorically held that if the husband has left behind his estate at the time of his death, there can be no justification for the view that the decree is wiped out when the heirs would succeed to the property, without being called upon to shoulder the liability of satisfying the decree.

She would rely upon the observation in paragraph no.14 of the said law report, where it is categorically held that it is also permissible to consider an application for varying, modifying or rescinding the order for maintenance even by those who have succeeded to the husband's estate and the estate can be freed from the liability. She would also place reliance upon the decision of the Apex Court in case of **Smt. Nandarani Mazumdar Vs. Indian Airlines and ors**,² when the Apex Court enhanced the alimony granted by the Three Judges Bench in favour of the wife towards divorce post-death of her ex-husband, though she concedes to the fact that the judgment is bereft of any detailed discussion and analysis. Reliance is also placed upon the decision in case of **R. Lakshmi vs. K. Saraswathi Ammal**,³ where the Supreme Court granted relief of enhancement.

Ms. Chavan would also place reliance upon the decision in case of **Yallawa Vs. Shantavva**⁴ where the Apex Court upheld

1 (1983) 3 SCC 522

2 (1983) 4 SCC 461

3 (1996) 6 SCC 371

4 (1997) 11 SCC 159

the right of a wife to Appeal a divorce decree, despite the death of the husband and she would submit that while considering the element of personal cause of action, the Apex Court specifically observed that, save and except the personal cause which dies with the deceased, the rest of the causes of action which have an impact on the proprietary rights and socio-legal status of the parties cannot be said to have died with such a person.

5. The apprehension expressed that if such enhancement, post the death of the husband is permitted qua his estate, it would open flood gates of litigation is strongly repelled by Ms. Chavan, by submitting that the same is completely unfounded as a careful reading of Section 37 would clearly reveal that it is a wife centric provision and if the rights of the husband and the wife were to remain crystallized in perpetuity, upon passing of the decree, then Section 37(1) would have the phrase “at any time subsequent to the decree” for the Court to exercise its jurisdiction rendered otiose, and according to her, the maintenance could be enhanced post the passing of the decree and it would be payable by the legal heirs succeeding to the estate, as this right continue to be available to the wife, *albeit* subject to satisfaction of the conditions and criteria stipulated in the said provision.

6. The learned counsel Dr. Pradeep Chavan has opposed the claim in the Appeal and has requested that the Appeal be dismissed, it being without any merit and substance. He would

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submit that upon the finality of the decree of divorce passed in the year 1999, the marital relationship between the appellant and her husband was irrevocably severed and they ceased to be husband and wife and became ex-spouses. Consequently, according to him, all reciprocal rights and obligations arising from the marital status including the wife's status as a legal heir stand extinguished and he would invoke the principle of law laid down in the decision of **Yallawa (Smt) vs. Shantavva (Smt)**⁵.

Dr.Chavan would also urge before us that the right to claim maintenance is a personal right that stems from the spousal relationship and the crystallised debt in form of arrears under a decree can be executed under the estate of the deceased, but the right to seek enhancement of maintenance is a fresh claim and this right, according to him, is contingent upon the continued existence of the parties and a change in their respective circumstances, but such a personal right does not survive the death of the person obligated to maintain the wife. He would invoke the principle laid down by the maxim '*actio personalis moritur cum persona*' signifying that a personal right of action dies with the person.

7. In alternative, it is also the submission of Dr. Chavan that a meticulous analysis of Section 37 of the Special Marriage Act, 1954, would evidently make it clear that the legislative intent also do not support the continuation of a right to enhance

⁵ (1997)11 SCC 159

maintenance against the estate of the deceased ex-spouse. He would submit that Section 50 and Order XXII of the Code of Civil Procedure, 1908 govern the execution of existing decree against the legal representatives and the survival of the cause of action respectively, but they do not create a new substantive right to claim enhanced maintenance from legal heirs, where no such right existed against the deceased at the time of his death. It is specifically urged by him that allowing such claims would open up flood gate of litigation and destabilize the administration of estates and result in perpetual uncertainty for legal heirs and it would also lead to an absurd situation where ex-spouses would litigate against the estates of their deceased former partners much after dissolution of their marriage. According to Dr. Chavan, the plain reading of Section 37 clearly indicate that while a maintenance decree under sub-section (1) may be executed for arrears against the estate, the right to vary or modify it under sub-section (2) is personal, to the original parties and cannot be exercised after the death of one of them to seek an enhancement against the other's estate.

8. According to Mr.Chavan, the issue formulated before us which deserve consideration by noting that it involves "right to sue" for enhancement of maintenance and whether such right survive the death of the husband. He concede to the position that right to recover arrears would survive the death of the husband/spouse but the right to seek future enhance maintenance does not, as personal claims such as those for

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defamation or assault, abate upon death of a party and by applying this principle, he would submit that the claim for enhancement of maintenance being intrinsically personal and dependent upon the existing circumstances of both the spouses being alive, fall in this category and therefore, the cause of action for enhancement does not survive to be pursued against the legal heirs.

He would heavily rely on the case of Yallawa (supra), which has clearly held that once the marriage gets dissolved, the status of spouses gets changed and they become ex-husband and ex-wife. Upon a decree of divorce, the marital tie is snapped and not only that, after such a decree when the spouses have ceased to be husband and wife and become ex-husband and ex-wife, proprietary rights of both spouses gets affected.

Invoking the underlying principle u/s.9 of the Hindu Adoption and Maintenance Act, 1956, Mr.Chavan has urged that the Hindu widow is entitled to be maintained out of her deceased husband's estate and failing which, by her father-in-law, under circumstances provided in the said section, but even this right will vanish after the decree of divorce, when her husband dies after securing a decree. He would distinguish the facts of the present case from those involved in **Yallawa (Smt)**, by submitting that the present claim is not for restoration of status, but for an enhanced monetary claim against the estate, which is a personal obligation that ceases with the death of the obligor. He would also distinguish the judgment relied upon by

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Ms.Chavan in case of **Mrs.Aruna Basu Mullick** (supra).

9. Mr.Chavan would draw a distinction between the claim for arrears of maintenance and the right to future maintenance, and he would submit that arrears are allowed to be treated as debt or property of the wife which is heritable and executable and converse to this, the right to future maintenance is a personal right which is not transferrable or heritable. According to him, the claim for enhancement is essentially a claim for higher future maintenance and this right to stake such a claim being personal, extinguishes with the death of the husband.

He has also distinguished the decision in case of Nandarani Mazumdar (supra) on which Ms. Chavan has placed heavy reliance and according to him, the said decision lay down a proposition of law to the effect that a decree for permanent alimony granted to the wife does not get extinguished upon death of the husband and the wife can continue to claim the alimony from his estate in the hands of his legal heirs.

It is in this background while a separate suit to enforce the alimony claimed was held to be barred by Section 47 of the Code of Civil Procedure, the Apex Court treated the Suit filed by the widow as an Execution Petition to prevent her from being deprived of her maintenance due to procedural error.

According to him, in no case, the Apex Court laid down a general proposition of law that any Suit can be converted into an Execution Proceedings but it was a specific direction in the interest of justice, and according to him, the unique factors

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which were present in Nandarani Mazumdar's case being conspicuously absent in the present case, the ratio is not at all applicable.

Dr. Chavan would also elaborate his argument by expounding the proposition sought to be urged, being the right to seek enhancement of maintenance, is a personal right which is contingent on the changing circumstances of the living spouses but this right as well as the corresponding liability is extinguished upon the death of the husband, as the liability of the estate is limited to satisfying the decree as it stood at the time of death of the husband though to be continued as long as the wife is alive.

10. In short, Dr. Chavan has vehemently asserted that enforcing the existing maintenance order against the estate is permissible, because it is a pre-determined liability of the deceased, whereas seeking its enhancement is not the enforcement of an existing right, but a creation of a new liability which definitely would require a fresh judicial determination based on the circumstances of either party, but since one of the party i.e. the husband being dead, a key component of this judicial exercise is absent and the legal heirs of the husband owe no personal duty to maintain the ex-wife/the widow. According to him, allowing the enhancement to be enforced against the legal heirs, would create perpetual uncertainty in the administration of estates, as the original order of maintenance provided a fixed liability

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against which the estate was to be administered but in the wake of a right to claim enhanced maintenance to be kept open, the heirs would be unable to ascertain their final liability and the estate passed to them could be tied up in litigation indefinitely.

He would therefore, seek dismissal of the Appeal and according to him, the point no.2 framed deserve an answer in the negative, though he concede to the situation that the arrears of maintenance can be claimed against the estate of the deceased husband and he request the Court to answer the first issue into positive, but the second into negative

11. We have carefully considered the submissions advanced by the learned Amicus as well as the learned counsel Dr. Chavan representing the respondent i.e. the legal heirs of the husband of the appellant.

In addition, the appellant has also tendered her written submissions, responding to the impugned judgment of the Family Court dated 9/2/2023 and she has submitted before us a chart of the enhancement in the maintenance amount granted by the Court since the year 1980 till the order of the Bandra, Family Court in the year 1999 which granted maintenance in the sum of Rs.6,000/-. By filing an Appeal before the High Court in form of Family Court Appeal No. No.69/2001, she would submit that she requested for payment of maintenance of Rs.15,000/- per month and independent accommodation or the amount in the sum of Rs.25,000/- per month including maintenance and accommodation. It is her specific contention

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that since May 1999 till December 2021 i.e. for a period of 22 years, she is only receiving an amount of Rs.6,000/- per month towards maintenance.

The appellant has attempted to canvas before us that it is difficult for her to lead her life, with such a meager sum being awarded to her and being juxtaposed against the properties and wealth and assets of her husband drawn on the basis of Testamentary Petition filed before the High Court, she would submit that his huge assets entitle her for an enhanced sum of maintenance, specifically in the background of the medical issues to which he is subjected on account of her advanced age, which warrant incurring of expenses on regular basis.

Along with the compilation, she has placed on record several decisions including the decision of the Apex Court in case of **Komalam Amma Vs. Kumara Pillai Raghavan Pillai and ors,**⁶ where it is held that a widow who does not succeed to the estate of her husband as his heir, is entitled to maintenance out of his separate property as well as out of the property in which he was a coparcener at the time of his death. It is categorically held by the Apex Court that the maintenance to be allowed to the widow should be such an amount as will enable her to live consistently with her position as a widow, with the same degree of comfort and luxury, as she had in her husband's house, unless there are circumstances which affect one way or the other, her mode of living there.

⁶ (2008) 14 SCC 345

Reliance is also placed upon the decision of the Kerala High Court in case of **Kaveri Amma Vs Parmeswari Amma**⁷ and the said decision is relied upon the proposition that the right to receive maintenance within the meaning of Section 39 will include not only the right to receive the maintenance either by agreement or by way of a decree but also right to claim enhancement from time to time.

12. In the light of the rival submissions placed before us and the two propositions formulated by us, need an examination in light of the statutory scheme of the Special Marriage Act, 1954, as the appellant solemnized her marriage under the special statute.

At this stage, we deem it appropriate to reproduce Section 37 of the Act of 1954, which reads thus :-

37 *Permanent alimony and maintenance*

(1) Any Court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, or application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability [the conduct of the parties and other circumstances of the case] [Substituted by Act 68 of 1976, Section 36, for certain words (w.e.f. 27.5.1976).] it may seem to the Court to be just.

(2) If the district Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the Court to be just.

⁷ AIR 1971 Ker 216

(3) If the district Court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, [it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the Court may deem just]

13. Parallel to the aforesaid provision is Section 22 of the Hindu Adoption and Maintenance Act, 1956 which reads thus:-

22 Maintenance of dependants.—

(1) Subject to the provisions of sub-section (2) the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate-succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.”

14. A bare and meaningful reading of Section 37, would clearly indicate that the Courts exercising jurisdiction under Chapter V pertaining to the Restitution of Conjugal Rights and Judicial Separation or Chapter VI under the caption ‘Nullity of Marriage and Divorce”, is empowered to make an order either at the time of passing any decree or at any point subsequent to the decree, by which the husband shall be directed to secure to the wife for her maintenance and support, if necessary, by a charge on the husband’s property, such gross sum monthly or periodical payment of money for her life time, by taking into

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consideration her property, if any, the husband's property and the ability as well as the conduct of the parties. Thus, sub-section (1) of Section 37 is a provision creating a right in the wife to claim maintenance in form of monthly or periodical payment during her life time, which deems to the Court to be just.

There is no difficulty about the said right being conferred on the wife to claim amount of maintenance and support, if she so deserves, in form of a gross sum or such monthly or periodical payments during her life time from the husband who is also alive.

15. Sub-section (2) of Section 37 deal with change in circumstances of either party, after any order has been made of permanent alimony and maintenance and it is the power of the Court to vary, modify or rescind any such order in such manner as the Court deem fit, at the instance of either party. The first question formulated by us involve sub-section (1) of Section 37, whereas the second question involve sub-section (2) of Section 37.

As far as the first proposition of law formulated by us as to whether a decree of maintenance will be enforced against the estate of the deceased husband, Dr. Chavan appearing for the respondent has conceded to the fact that the decree passed in favour of the appellant granting maintenance of Rs.6,000/- do not extinguish on the death of her husband and we find sufficient support in favour of this proposition of law. In

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Yallawa (Smt.) Vs. Shantavva (supra), the Apex Court clearly held thus :-

“6..... It is also to be kept in view that such petition for divorce can be moved either by the husband or the wife, as the case may be. To that extent, it is certainly a personal cause of action based on one or more matrimonial misconducts alleged in the petition against the erring spouse. Consequently, in such proceedings before any decree comes to be passed, if either of the spouses expires pending the trial, then the personal cause of action would die with the person. Such civil proceedings would not abate only if the right to sue survives after the death of one of more of the parties to the proceedings as laid down by Order XXII Rule 1 CPC. However, if during pendency of the petition for divorce, either of the spouses expires, the cause of action being personal to both of them, the right to sue would not survive.”

In the very said decision, the Apex Court further held thus:-

“Save and except the personal cause of action which dies with the deceased on the principle of *actio personalis moritur cum persona* i.e. a personal cause of action dies with the person, all the rest of the causes of action which have an impact on proprietary rights and socio-legal status of the parties cannot be said to have with died with such a person.”

16. In **Aruna B. Mallick** (supra), the Apex Court was called upon to decide the question, whether a decree for permanent alimony passed under Section 37 of the Special Marriage Act, 1954 is wiped out on the death of the husband/judgment debtor.

The facts involved reveal that the parties were married under the Special Marriage Act, 1954 and a decree of divorce was obtained by the respondent in 1961, with the direction that the petitioner wife shall get sum of Rs.300/- as maintenance to be paid by first week of each month following which it is due

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until she remarries. The respondent wife sought execution of the decree and the same was compromised and payment of arrears was undertaken to be made in instalments. The husband Prafulla Kumar Mitra executed a Will, but made no provision for satisfaction of the maintenance decree. He died on April 3, 1965 and the appellant who was the executrix under his Will got it duly probated.

It was not disputed that the executrix paid the maintenance in December 1975 for period after the death of Prafulla Kumar, but since no payment was made thereafter, the wife instituted execution proceedings in matrimonial case, claiming recovery of arrears which was objected by the executrix, but raising objection under Section 47 of the Code of Civil Procedure, by pleading that the order of alimony not being charged, the death of Prafulla Kumar Mitra has extinguished the claim of the purported decree holder.

In this factual background, the question that fell for consideration was formulated by stating that the sole controversy was, whether the order for alimony got extinguished with the death of Prafulla Kumar Mitra. The provision involved was Section 37 of the Special Marriage Act and in that background, it is held by the Apex Court as below :-

“5. The language of the Section does not warrant the conclusion that there is extinguishment of the decree for alimony upon death of the judgment-debtor husband. We have been told at the Bar that there is no decision on the point and therefore, English decisions should be considered for deciding the matter.”

Reference was made to some other English statutes

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including the English Matrimonial Causes Act, 1950 and the distinction between the said statute, an Indian Act, was noted. It was also noted that in case of a direction for payment, during the joint lives, there was dispute that on death of one of the spouse, the obligation under the decree ceases and the English Courts had taken a view that there was direction for payment during life of the wife, it abates with the death of the husband. However, reference was made to the observation in Lord Denning in the decision in **Sukhden Vs. Sukhden**⁸ to the following effect :-

“There is no difficulty in an ordinary action in determining when the right or liability accrued due; but there is more difficulty in proceedings in the Divorce Court. In that court there is no right to maintenance, or to a secured provision, or the life, until the court R makes an order directing it. There is therefore no cause of action for such matters until an order is made. In order that the cause of action should subsist at the death, the right under the order must itself have accrued at the time of death. Thus a cause of action subsists against a husband for arrears of maintenance due at his death, but not for later payments.”

17. The submission on behalf of the appellant that the matrimonial proceedings abate on death of either party and the legal representatives cannot be brought on record and the proceedings cannot be continued any further, came to be accepted with reference to the observation of L.J. Bowen in **Stanhope Vs. Stanhope**,⁹

“A man can no more be divorced after his death, then he can after his death be married or sentenced to death. No person can dissolve a marriage which is dissolved by act of God.”

However, though it was categorically noted that a

⁸ 1957(1) All E.R 300

⁹ (1886) 11 PD 103

matrimonial proceedings come to an end with the death of either spouse, where the proceeding has terminated and a decree has emerged, the question fell for consideration was whether the decree would also abate and this was answered in the following words :-

“There can be no manner of doubt and it has also been fairly conceded before us that where maintenance has been made a charge on the husband's estate, the death of the husband would not at all affect the decree and notwithstanding such death, the estate can be proceeded against for realisation of the maintenance dues for post- death period.”

18. Since it was conceded by the learned counsel for the appellant that if there is decree arising out of a civil action, death would not result in wiping out a decree, and if a decree arising not out of matrimonial dispute, did not abate and the estate of the judgment debtor would be liable for its satisfaction, it was held that a decree for alimony or maintenance would not abate, when the same is charged upon the husband's estate. It was held that there was no rationality in the contention that a decree for maintenance or alimony gets extinguished with the death of the husband, when any other decree, though not charged on the husband's property, would not be extinguished. A decree against the husband is executable against the estate of the husband, in the hands of the heirs and there is no personal liability and if a decree indicated that the maintenance was payable during the life time of the widow, to make such a decree contingent upon the life of a husband, was held to be contrary to the terms and spirit of

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the decree.

19. As far as the first proposition formulated by us, we have no hesitancy in holding that the maintenance decree does not abate or extinguish on the husband's death and the estate or legal heirs remain liable for pending arrears, depending on the decree terms for ongoing payments. Such a decree is executable against the husband's estate in the hands of the heirs, whether the maintenance was charged on the estate or not.

In short, it is ruled that maintenance decree bind the estate/heirs for arrears satisfaction, unlike pending matrimonial proceedings that abate on death. A finalised decree of maintenance is treated like any civil decree which is enforceable post death and the death of the husband would not at all affect a decree of maintenance whether or not, it has created a charge on the husband's estate and notwithstanding such death, the estate can be proceeded for realisation of the maintenance dues for post death period.

A clear answer is provided to the question, that while a matrimonial proceeding come to an end with death of either spouse, but where the proceeding has terminated and decree has emerged whether such decree would also abate and this received an answer from the Apex Court in Aruna Basu Mullick in the negative – as decrees endure like civil judgments.

20. The underlying legislative intent under such provision can be clearly discerned as the Parliament intended to confer protection on the wife who is entitled for the claim of

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maintenance during her life time from the husband and if the husband has left behind his estate while he demised, there can be no justification to the view that the decree is wiped out and the heirs would succeed to the property without this liability. Sub-section (1) of Section 37 of the Special Marriage Act clearly cast obligation on the husband to secure to the wife, a sum of money for a term not exceeding her life i.e. during her life time for her maintenance and support, and if necessary, by creation of a charge on the husband's property. In wake of the specific legislative intent, the maintenance or its arrears are recoverable from the estate of the deceased husband, even after his death, as the whole purpose and intent of the legislature was to ensure maintenance and support to the wife during her life time.

Being *juxtaposed* against Section 22 of the Hindu Adoption and Maintenance Act, 1956, which is a provision for maintenance of dependents, in the wake of the specific provision that the heirs of the deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased and it further clarify that the liability of each of the person who takes the estate, shall be in proportion to the value of the share or part of the estate taken by him or her.

However, under Section 37, whether or not, there is a charge on the husband's property for the gross sum or such monthly or periodical payment of money payable to the wife by way of permanent alimony and maintenance or whether there

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is no charge, it is by this time a settled position that the right of the widow to claim maintenance during her life time or the arrears, survive, despite the death of her husband and it is recoverable from the estate of her deceased husband.

21. The proposition of law is therefore, well settled that the maintenance decree which recognizes the wife's right to claim maintenance shall be enforced and executed against the estate of her husband and the monthly payment as well as the arrears of maintenance that have accrued are entitled to be recovered from the estate of her deceased husband.

22. Turning our attention to the second and the core issue before us, as to whether the right to claim maintenance which has been crystallised by a decree from the competent court give rise to a claim for enhancement of the amount, after the death of her husband and whether this right can be enforced against the estate of late husband, what is pressed into service is sub-section (2) of Section 37 which contemplate variation, modification or rescinding of an order of permanent alimony and maintenance under sub-section (1) of section 37 in the wake of change in the circumstances of either party at any time after such an order is made.

23. According to the learned amicus, since Section 37 of the Special Marriage Act conferred a right on the wife to claim permanent alimony and maintenance, it is necessary to have the focus upon the important facets and elements of the said provision. Her emphasis is on the mandatory nature of this

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right of the wife with a reciprocal obligation cast on the husband, to secure for her maintenance and support, such gross sum or such monthly or periodical payment, as the Court deem fit. She has emphasized that the maintenance and support granted under the provision can be secured, if necessary, by creating a charge on the husband's property qua the quantum of maintenance for the life time of the wife.

It is accepted by her that the relief under sub-section (1) of Section 37 is not unfettered and the Court would give credence to the property owned by the wife, the husband's property and his ability, conduct of parties and circumstances of the case.

24. As the learned Amicus has specifically urged that the whole purpose of sub-section (2) of Section 37 is to take into consideration the occurrence of change of circumstance, post passing of the order under sub-section (1) and since the intention of the legislature in enacting section 37 was to create a mode of financial security for the wife, definitely it applies with equal force to sub-section (1) as well as sub-section (2) and by applying the literal rule of construction, since the words are clear and do not result in absurdity and anomaly, the rule of literal construction shall be followed.

It is an assertive submission advanced by the learned amicus that the Parliament thought it fit to make the wife entitle for permanent alimony and maintenance not exceeding her life and therefore, at any time, subsequent to the passing of

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the decree, if she desire a modification or variation of the order of alimony and permanent maintenance, the Court is duty bound to consider the said application and the fact that the husband has demised, will not result in ouster of her claim.

25. Heavy reliance is placed on the decision in case of Smt. **Nandarani** (supra) but Ms. Chavan has fairly conceded that the enhanced alimony granted by the Apex Court post-divorce and post death of the husband, however, has not spelled out specific reasons.

The facts involved reveal that while granting a decree for dissolution of marriage, the Court directed that Smt. Nandarani, the plaintiff would get permanent alimony and maintenance from the date of decree till her death or remarriage or any other act which would disentitle her from getting the amount. The maintenance was paid in her favour from 1966 to October 1972 by the husband who died on 18th December 1972, leaving behind a huge asset lying to the credit with the employer. The plaintiff, therefore, instituted a Suit for creation of charge and also sought recovery of Rs.8750/- to be the due as outstanding maintenance and also sought an injunction against withdrawal of the money lying with the Indian Airlines, the employer of the husband, unless adequate arrangement was made for payment of alimony to her. The claim was contested by Indian Airlines and the two ladies impleaded as defendant nos.2 and 3 who claimed to be the wives of late Captain Majumdar.

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The resistance was mainly on two grounds; (i) that the order of payment of alimony lapsed with the death of the husband and (ii) that a separate Suit for this claim was not maintainable in view of Section 47 of the Code of Civil Procedure.

The Trial Court held that the order for payment of alimony was terminated with the husband's death though she could recover the small amount of the dues of two months prior to his death.

26. The issue being taken up before the High Court, it held that the death of the husband did not affect the payment of alimony and the same could be recovered from his estate in the hands of the heirs and successors, though it was held that an independent Suit by the plaintiff was barred.

The Appeal being taken up by the Apex Court, during its hearing, the terms of settlement were mooted and it was indicated that there was some force in the plea that separate suit would not lie, but the Suit could be treated as an execution petition and this pursuit was followed.

By working out a practical solution to the issue as Captain Mazumdar had left behind huge sum with his employer and though defendant nos.2 and 3 had withdrawn some amount, it was found that a sum of Rs.75,000/- was kept in a Fixed Deposit and out of this amount, some amount was paid to the plaintiff

Therefore, a practical arrangement was worked out, directing that the appellant shall be paid the entire interest so

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that she may have the benefit of enhanced alimony to meet the rising cost of living and cost of litigation. Thus, we find that the said decision is based on practical aspect of the matter without getting into the issue as to whether by way of right, even after the death of the husband, the maintenance amount can be enhanced.

27. In **Yallawa Vs. Shantavva** (supra), the Apex Court has upheld the right of a wife to appeal divorce decree even after the death of the husband, by declaring that though a personal cause of action dies with the person, all the rest of the causes of action which have an impact of proprietary rights and socio legal status of the parties do not die and can be continued and the wife was allowed to pursue the litigation challenging grant of ex-parte divorce, despite demise of her husband.

28. Coming to the core issue, it is necessary to determine the nature of the right to claim maintenance.

Any provision like Section 37 of the Special Marriage Act which create a right in favour of the wife to claim maintenance and alimony, imposes a reciprocal personal obligation on the husband to maintain his wife irrespective of the possession of any property, during his life time.

The right of the wife to be entitled for permanent alimony and maintenance under the order of the Court, if necessary, by creating a charge on his property, shall however persist during her lift time, and it is a right personal to her and not permitted to be alienated. Her claim of maintenance is a personal claim

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and her entitlement holds good during her life time. She cannot transfer the said right on her death and her right to receive maintenance extinguishes with her death.

The right conferred on the wife to receive alimony under Section 37 created a reciprocal obligation on the husband, by use of the specific wording in Section 37 “the husband shall secure to the wife for her maintenance and support.”.

A personal obligation extinguishes upon the death of the obligor. The right of the wife to receive alimony/maintenance is a right in *personem*, that is, it is a personal and vested right which imposes a corresponding duty on a specific obligor; it is a right which inheres in the person and cannot be alienated.

29. As per Roscoe Pound, in an introduction of Philosophy of Law, (Yale University Press 1922, the dependent spouse’s claim is under ‘individual interests of personality’ – interest in domestic and dependent relations’.

During the life time of the husband, he is under personal obligation to maintain his wife, irrespective of the possession of any property. On his death, that obligation fastens to his property in the hands of an heir or legal representative.

24. The question for consideration, is while the estate may be liable for executing an existing quantified debt, but whether it could be subjected to a fresh adjudication for enhancement after the demise of the husband.

A careful reading of sub-section (2) of Section 37 is therefore, imperative.

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The said provision allows an application for variation to be made by 'either party' i.e. the party to the matrimonial proceedings being the husband and the wife. This provision, therefore, do not extend to the legal heirs or the estate holders of the husband. While considering the application of either party for variation, modification or rescinding of an order made by the competent court, for permanent alimony and maintenance, it will be necessary to establish that there is change in the circumstances of 'either party' at any time after it has made an order under sub-section (1).

The whole scheme of Section 37 of the Special Marriage Act, 1954, including its sub-section i.e. sub-section (1), (2) and (3) involves the parties in a matrimonial relationship, being the husband and wife only.

Sub-section (1) has created a right in favour of the wife for her maintenance and support with a reciprocal obligation being imposed upon the husband; her claim liable to be determined having regard to her own property, if any, her husband's property and ability and the conduct of the parties. When it comes to sub-section (2) being the power of the Court to vary, modify or rescind the order made under sub-section (1), even this involves 'either party', which is either the husband or the wife. The order of permanent alimony and maintenance can therefore, be varied or modified only at the instance of either party, clearly contemplating that the variation is against the 'other party' i.e. either the wife making an

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application in the change circumstances against the husband or the husband making the application pointing out the change in circumstances, in force after the order of permanent alimony and maintenance was made.

Both the situations necessarily contemplate the existence of both the parties i.e. both husband and wife being alive.

In the same rhythm, sub-section (3) has conferred the power on the District Court to vary, modify or rescind an order of permanent alimony and maintenance made in favour of the wife, if she has remarried or if she is not living a chaste life, then the order in her favour granting maintenance may be varied or rescinded by the Court.

25. Perusal of the scheme of Section 37, would thus reveal that the key elements in the whole provision are two; the 'husband' and the 'wife'.

The orders to be passed under each of the sub-section of Section 37 necessarily contemplate the Husband and the Wife to be alive as the order made on the application of one of them is implemented against the other.

Under sub-section (2) where the power is conferred upon the District Court to vary, modify or rescind an order of permanent alimony and maintenance on account of the change in circumstances against 'either party' at any time after the order was made under sub-section (1) which was based on the property of the wife, if any, the property of the husband and his ability and the conduct of the parties and other circumstances

of the case, it definitely warranted a fresh judicial determination. A wife seeking enhancement of the maintenance is not enforcing her existing right of maintenance which is crystallised by an order/decreed passed by the competent court, but when she seek enhancement of the amount awarded in her favour under sub-section (1), by inviting the attention of the Court to the change in circumstances of either party, i.e. that of the husband, it necessarily contemplate a fresh judicial determination based on the 'circumstances of either party' involving even the husband. In a situation where one of the party i.e. the husband is deceased, the key component of the judicial exercise for determination of enhancement is absent and definitely this right of enhancement cannot be claimed against any party other than the husband and definitely, not against the legal heirs who have no personal duty to maintain the ex-wife.

Sub-section (3) of Section 37 which disentitles the wife to claim maintenance include the circumstances inherently connected to the marital tie i.e. the wife has remarried or she preferred to chose leading an unchaste life. The husband, in such circumstances, is entitled to seek modification or variation or rescinding of an order, putting him under an obligation for maintaining his wife, despite that he has divorced her, and as long as she do not solemnize a second marriage. The right conferred under sub-section (3) is also personal to the husband as an application can be filed at the instance of the husband

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and the variation in the order of permanent alimony and maintenance passed in form of a decree cannot be rescinded at the instance of the legal heirs.

On a similar principle, since the heirs cannot exercise the right to vary, modify or rescind the order of permanent alimony and maintenance, even the wife is also not entitled to exercise her right to claim enhanced maintenance against the legal heirs in whom the estate of the deceased now stand frozen.

26. If the right to maintenance is a personal right, the right to seek enhancement of maintenance is also equally personal and can be exercised by one party in the matrimonial relationship as against the other. By a decree passed by the competent Court, if an amount in form of gross sum or monthly or periodical payment of money is awarded in favour of the wife, as amount towards permanent alimony and maintenance and this right is crystallised by a decree, despite the death of the other party, i.e. the husband, she is entitled to recover the said amount against the estate because this right is conferred on her for a term not exceeding her life. Even after the husband's demise, she continue to live as his widow and definitely, the parameters which govern her right to claim maintenance, having no source of her living or she being unable to maintain herself, continues to exist even after his death.

That is the very precise reason that during her life time, she is entitled to avail the grant of permanent alimony and maintenance as long as she continue to be alive and this shall

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be recovered from the estate of deceased husband.

27. Though the Special Marriage Act, 1954 is a statute which provide for a special form of marriage, and for registration of such marriage as well as divorce and is secular in nature, and any two persons subject to compliance of the conditions relating to solemnization of such marriage as prescribed in Section 4 can enter into a matrimonial tie under the Act of 1954 by following the procedure prescribed under the said Act, the relationship between the husband and wife which comes into existence upon they entering a matrimonial tie more or less is based on similar parameters.

Under the Hindu Adoption and Maintenance Act, 1956, governing the marriage solemnised under the Hindu Marriage Act, 1955, the husband's duty to maintain his wife has received consideration as a primary religious obligation, pre-existing a statutory codification, which with the enactment of the statute received recognition as an enforceable right under section 25 of the Hindu Marriage Act, 1955, including section 18, 22 and 23 in the Hindu Adoption and Maintenance Act.

As per Section 18 of the Act of 1956, the Hindu wife is entitled to be maintained by her husband during her life time and she is also entitled to claim maintenance even by residing separately from him in the circumstances set out in sub-section (2) thereof. However, her right to claim maintenance is constricted by sub-section (3) on account of she converting into some other religion or losing her chastity.

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28. Once we have pronounced upon the nature of the right to claim maintenance and the reciprocal obligation of the husband to maintain his wife, which to some extent is an obligation, somehow similarly placed under the Special Marriage Act, 1954 and Hindu Adoption and Maintenance Act, 1956, we have no difficulty in holding that the claim for enhanced maintenance against the legal heirs of her deceased ex-husband under section 37 of the Special Marriage Act, 1954, cannot be entertained, the right claimed by her being a personal right and its variation being made contingent on the change in circumstances of the living spouses. This right and corresponding personal liability gets extinguished upon death of the husband though we have no difficulty in accepting the proposition well settled by now that it will be the liability of the estate of the deceased husband to satisfy the decree as it stood at the time of his death as the wife is entitled to exercise her right to be maintained by the husband for her life time and this right do not extinguish merely because of the demise of the husband.

29. Reliance placed by the learned amicus on the decision relied in Nandarani Mazumdar, where the Supreme Court had granted enhanced alimony post the husband's death, is not of any succour in support of the proposition that the wife can claim enhanced maintenance after the death of the husband. In the said case, the Apex Court exercising its extra-ordinary and equitable jurisdiction, to do complete justice, directed that the

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entire interest from the deposited sum be paid to the widow. This was done *ex debito justitiae*, considering long drawn litigation and the rising living cost, but it definitely do not lay down the proposition that section 37(2) would empower the Family Court to entertain a fresh application for enhancement after the death of the husband. Similarly, reliance placed on Yallawa (*supra*) to submit that the right to sue survives the death of his spouse in matrimonial matters also do not take the case for the appellant any further. The said decision has laid down a proposition which cannot be at all disputed, being that a spouse can challenge a divorce decree even after the other spouse's death, because the decree affects the legal status and also the right to the property. The challenge to the decree is seeking restoration of the pre-existing status and in some cases, the right to inherit however, when we speak of enhancement, it creates a new and increased monetary liability on the estate, which is not a pre-existing right but the claim is staked after the death of the husband.

30. The right of the wife to claim maintenance and the reciprocal obligation of the husband to maintain her, is a right which is personal in nature.

Salmond on Jurisprudence, Twelfth Edition, P J Fitzgerald has drawn a distinction between proprietary and personal rights in the following words:-

“Proprietary and personal rights : Another important distinction is that between proprietary and personal rights. The aggregate of a man's proprietary rights constitutes his estate, his assets, or his property in one of the many senses of that most equivocal or legal

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terms. The sum total of a man's personal rights, on the other hand, constitutes his status or personal condition, as opposed to his estate. If he owns land, or chattels, or patent rights, or the goodwill of a business, or shares in a company, or if debts are owing to him, all these rights pertain to his estate. But if he is a free man and a citizen, a husband and a father, the rights which he has as such pertain to his status or standing in the law.

The distinction lies in the fact that proprietary rights are valuable and personal rights are not. The former are those which are worth money; the latter are those that are worth none. The former are the elements of a man's wealth; the latter are merely elements in his well-being."

31. We also find merit in the submission of Dr. Chavan representing the legal heirs of the deceased husband that the consequences of allowing the enhancement would result in absurdity, uncertainty and would open flood gate of litigation; absurdity for the reason that if the claim for enhancement is based on the ex-wife's needs which have undergone a change since the time when the decree was passed in her favour, the determination will not have the other wise of the equation i.e. the husband's ability to pay, as he is no more alive. Apart, if the enhancement is based on the notional growth of the estate in the hands of the legal heirs, the enhancement would treat them unfairly if the growth of the estate, is purely attributable to their own doings. It would therefore, amount to creating of a share in the estate for the ex-wife, who is not at all responsible for the growth of the estate of her husband, had it been the case that her husband had substantially progressed and created wealth or estate during his life time, definitely, she would have been entitled to claim a share therein, but the legal heirs are not bound to share their financial growth with the widow.

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Another consequence for allowing enhancement would result in uncertainty, as the legal heirs will not be in a position to ascertain their final share, as the estate would be perpetually open to claim for enhancement by the widow, every time inflation rises or there is change in the need and requirement of the ex-wife and this would prevent the heirs from dealing freely with the inherited property or taking major decisions potentially created a future for them.

This definitely would defeat the principle of finality in succession law.

Apart from this, definitely allowing such claims for enhancement would open the floodgates to litigation, as it would allow the ex-wives to repeatedly file applications for enhancement against the heirs of deceased ex-husband, the variation being sought at the drop of the hat, on the pretext that it has resulted into the change in circumstances in her life or on the ground that the estate of the deceased in the hands of the legal heirs has flourished.

32. For all the aforesaid reasons, we do not agree with the learned amicus, canvassing the case of the appellant to the effect that she is entitled to claim enhancement maintenance by filing an application under sub-section (2) of Section 37 of the Special Marriage Act, even after the death of her husband. We therefore, answer the second issue formulated by us in the negative.

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We, therefore, find that the impugned order passed by the Family Court refusing to entertain the application for enhancement of maintenance by the appellant not warranting any interference, though we find that the family Court has also appreciated the merits of the case and declined to grant a relief.

33. As a result of the aforesaid, we dismiss the Appeal filed by the appellant.

We would like to place on record our appreciation for the learned amicus/senior counsel Ms. Deepa Chavan, who has rendered her able assistance to us in determination of the issues that fell for her consideration. We would also like to place appreciation for the assistance rendered by Dr. Chavan representing the respondents.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J.)