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Death Does Not Discharge the Debt: Bombay High Court on Maintenance Decrees and the Limits of Spousal Obligations Post-Mortem

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Background and Factual Matrix

In a significant ruling delivered on 6th May 2026, a Division Bench of the Bombay High Court comprising Justices Bharati Dangre and Manjusha Deshpande authoritatively resolved a long-contested question of matrimonial law: whether a maintenance decree survives the death of the husband and, critically, whether a divorced wife may seek enhancement of that maintenance from the deceased husband's estate. The judgment, arising from Family Court Appeal No. 74 of 2023, carries profound implications for family law practitioners, estate administrators, and parties to matrimonial proceedings governed by the Special Marriage Act, 1954.

The appellant, Warsha Eleekusumchand Javeri, had married XYZ under the Special Marriage Act, 1954 in January 1974. The couple remained estranged from 1977 and had no children. Divorce proceedings were instituted by XYZ in 1980, and in 1999, the Family Court at Bandra dissolved the marriage while directing XYZ to pay the appellant Rs. 6,000 per month as permanent maintenance. Both parties filed appeals before the High Court, which were dismissed in default in June 2005. XYZ passed away intestate in March 2012 without having remarried, leaving his estate to be administered by his brother, Suren Goregaonkar, who was granted Letters of Administration by the High Court in 2014.

The appellant thereafter filed a Miscellaneous Application before the Family Court seeking two reliefs: recovery of arrears of maintenance as per the 1999 decree, and enhancement of the monthly maintenance amount. On 9th February 2023, the Family Court granted the first relief but rejected the prayer for enhancement, holding that the appellant possessed sufficient resources and that no case had been established warranting an increase. A charge was, however, permitted to be created on the deceased's properties for recovery of the decreed amount during the appellant's lifetime. Aggrieved by the rejection of enhancement, the appellant preferred the present Family Court Appeal.

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Legal Questions Framed by the Court

Recognising the significance of the questions raised, the Division Bench formulated two precise legal issues by its order dated 16th January 2026. First, whether a divorce maintenance decree can be enforced against the estate of a deceased husband by his divorced wife. Second, whether a divorced wife may seek enhancement of such permanent maintenance against the estate of her deceased husband. The Court appointed senior counsel Ms. Deepa Chavan as amicus curiae, given the importance of the questions involved.

Submissions of the Parties

The amicus curiae argued that Section 37 of the Special Marriage Act, 1954 confers jurisdiction on the Court to grant maintenance not only at the time of the decree but "at any time subsequent to the decree." Emphasising the mandatory character of the word "shall" in sub-section (1), she submitted that the husband is obligated to secure maintenance for the wife for her lifetime, if necessary by a charge on his property, and that this obligation does not dissolve upon his death. She further contended that Section 37 is a wife-centric provision creating a protective financial architecture, and that allowing the phrase "at any time subsequent to the decree" to be rendered otiose would defeat the legislature's intent. Reliance was placed on the Supreme Court's decisions in Mrs. Aruna Basu Mullick v. Mrs. Dorothea Mitra [(1983) 3 SCC 522], Smt. Nandarani Mazumdar v. Indian Airlines [(1983) 4 SCC 461], R. Lakshmi v. K. Saraswathi Ammal [(1996) 6 SCC 371], and Yallawa v. Shantavva [(1997) 11 SCC 159].

The respondent's counsel, Dr. Pradeep Chavan, conceded that the existing maintenance decree does not extinguish upon the husband's death and that arrears are recoverable from the estate. However, he strenuously opposed the claim for enhancement, invoking the Latin maxim actio personalis moritur cum persona that a personal right of action dies with the person. He argued

that a claim for enhanced maintenance is an entirely fresh claim requiring judicial determination of the changed circumstances of both living parties. Since the husband is deceased, a critical component of this exercise is irrevocably absent. He further submitted that sub-section (2) of Section 37, which enables variation or modification of maintenance orders, is available only at the instance of “either party” necessarily meaning the living husband or wife and does not extend to legal heirs. Allowing enhancement, he warned, would create perpetual uncertainty in estate administration and open the floodgates to protracted litigation.

The Court’s Analysis and Ruling

On the first question, the Court answered unequivocally in the affirmative. Drawing upon Aruna Basu Mullick and the statutory language of Section 37(1), the Court held that a finalised maintenance decree is to be treated as any civil decree it endures post-death and is executable against the husband’s estate in the hands of his legal heirs, irrespective of whether the maintenance has been charged on his property. The legislative intent underlying Section 37, the Court observed, is to ensure maintenance and support to the wife for her lifetime, and it would be entirely contrary to that intent if heirs were permitted to succeed to the estate while escaping the liability attached to it.

On the second and core question, the Court answered in the negative. Undertaking a careful textual and structural analysis of Section 37, the Court held that the entire provision across all three sub-sections is predicated upon the continued existence of both the husband and the wife as living parties. Sub-section (2), which permits variation or modification of maintenance orders upon changed circumstances of “either party,” necessarily contemplates a fresh judicial determination involving both parties. Where the husband is deceased, the key component of that exercise is extinguished. The right to seek enhancement is personal in nature a right in personem and the corresponding personal obligation of the husband ceases upon his death. Legal heirs bear no personal duty to maintain the ex-wife and cannot be subjected to this fresh liability.

The Court distinguished the Supreme Court’s decision in Nandarani Mazumdar, clarifying that the enhancement granted therein was a practical, equitable arrangement made under the apex court’s extraordinary jurisdiction ex debito justitiae, and did not lay down a general proposition that Section 37(2) empowers a court to entertain enhancement applications after the husband’s death. Similarly, Yallawa v. Shantavva which permitted a wife to challenge a divorce decree even after the husband’s death on grounds of its impact on legal status and property rights was distinguished on the basis that a challenge to a decree seeks restoration of a pre-existing status, whereas a claim for enhanced maintenance creates an entirely new and increased monetary liability, which is not a pre-existing right but a claim staked post-mortem.

Conclusion

The Bombay High Court dismissed the appeal, affirming the Family Court’s order. The judgment establishes a clear and authoritative dichotomy: a maintenance decree crystallised during the husband’s lifetime survives his death and binds his estate for ongoing payments and arrears; the right to seek enhancement, however, is personal and extinguishes upon the husband’s death, as it requires a judicial assessment of both parties’ living circumstances. These ruling shows the need for seeking adequate maintenance during the husband’s lifetime. Once the husband is deceased, the estate is fixed in its liability at the quantum of the existing decree, and no enhancement can be sought from the legal heirs.

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