

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE SIDE
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

FAT 271 of 2023

CAN 1 of 2023
CAN 2 of 2023

Priyadarshini Mallick

Vs.

Avra Sen

With

FAT 327 of 2023

CAN 1 of 2023
CAN 2 of 2023
CAN 3 of 2023

Neelavra Sen

Vs.

Priyadarshini Mallick

With

CO 2391 of 2023
(assigned)

Priyadarshini Mallick

Vs.

Avra Sen

Appearance:

For the Appellant/Wife	:	Mr. Ashok Kumar Banerjee, Sr. Adv. Mr. Saptangu Basu, Sr. Adv. Mr. Ram Anand Agarwal, Adv. Mr. Sibasish Ghosh, Adv. Ms. Nibedita Pal, Adv. Ms. Sonam Ray, Adv.
------------------------	---	---

For the Respondent/Husband : Mr. Kushal Chatterjee, Adv.
Mr. Debabrata Roy, Adv.
Mr. Oishik Chatterjee, Adv.

For the Petitioner : Mr. Saktinath Mukherjee, Sr. Adv.
(in CO 2391 of 2023) Mr. Susovan Sengupta, Adv.
Mr. Ananda Gopal Mukherjee, Adv.

Judgment On : **11.12.2023**

Harish Tandon, J.:

The aforesaid two appeals are taken up together having a common thread in relation to the maintainability of an appeal under the relevant law. FAT 271 of 2023 is at the behest of the wife who emerged successful in a proceeding initiated by her for dissolution of marriage and FAT 327 of 2023 is filed through a next friend of the minor son of the parties to FAT 271 of 2023 assailing the selfsame judgment and decree passed by the Court below granting divorce.

A plea of maintainability of an appeal in both the matters is taken up contesting the respondent on two scores firstly, the appeal filed by the wife assailing a decree for dissolution of marriage is incompetent and not maintainable as she cannot be regarded as an “aggrieved person” for the simple reason that her proceeding in this regard was decreed in her favour, secondly, the appeal at the behest of the next friend of the minor son of the parties assailing a decree for dissolution of marriage is also not maintainable as a third party to a suit for dissolution of marriage is incompetent and cannot be regarded as “aggrieved person”.

To address the point of maintainability, it would be profitable to narrate the salient facts which are more or less undisputed. Priyadarshini Mallick was married to Neelavra Sen under the Special Marriage Act and upon a dispute having cropped up, a proceeding under Section 27 of the said Act filed by Priyadarshini Mallick on the ground of desertion and cruelty. The said proceeding ended in her favour as the Court granted the decree dissolving the marriage between the parties. Such being an undisputed facts, the said Priyadarshini Mallick filed an appeal assailing the decree for dissolution of marriage passed in her favour on the ground that the findings made therein does not warrant granting a decree for dissolution of marriage; in other words, according to her, she was unable to prove the case of desertion in the evidence and, therefore, the Court below should not have passed the decree for dissolution of marriage.

The question arose as to whether an appeal is competent against a finding and capable of being assailed by a successful litigant before the Court of appeal. Section 39 of the said Act provides a remedy by way of an appeal without expressly indicating at whose instance it would lie. Section is quoted as under:

“Section 39 of the Special Marriage Act:-

Appeals from decrees and orders.—

(1) All decrees made by the court in any proceeding under Chapter V or Chapter VI shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act, under section 37 or section 38 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a 2[period of ninety days] from the date of the decree or order.]”

It is manifest from the aforesaid provision that all decrees made by the Court in any proceeding under Chapters V and VI thereof is appealable as a decree of the Court before a higher forum subject to the restriction that such decree is incompetent if filed on the imposition of costs only. The right of appeal emanate from the statute and is, therefore, regarded as a creature of the statute. A right of appeal cannot be assumed or presumed in the absence of any statutory provision in this regard as such conferment of right has to be expressly included in the statute. It admits no ambiguity that every decree passed under Chapters V and VI of the said Act is amenable to be challenged by way of an appeal under Section 39 of the said Act but the question still begging an answer whether a successful litigant has a right of appeal against such decree solely on the ground that the findings made therein does not warrant passing of such decree in his/her favour.

Obviously, the wife cannot be regarded as a person aggrieved in relation to a decree granted in her favour. The wife instituted a suit seeking a decree for divorce which was granted by the Trial Court and, therefore, she cannot come forward and say that she is an aggrieved person. A point is sought to be taken that the evidence adduced by her and the findings

recorded by the Trial Court in support of the final relief does not invite passing of the decree in her favour. The decree is not defined in the said Act, however, such definition can be reasonably ascertained from the spirit of the language used in Section 39 of the said Act which postulates that such appeal would lie to a Court in which the appeals ordinarily lie from a decision of the Court given in exercise of original civil jurisdiction. The decree is defined in Section 2 (2) of the Code of Civil Procedure in the following:

“ 2 (2): “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [* * *] Section 144, but shall not include –

- (a) any adjudication from which an appeal lies as an appeal from an order, or***
- (b) any order of dismissal for default.***

Explanation. – A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:”

It is exposit from the said definition that the decree would mean the formal expression of an adjudication so far as the Court expressing it conclusively determining the rights of the parties in relation to any of the matters in controversy. The judgment is also defined in Section 2 (9) of the said Code to mean the statement given by the Judge of a ground of decree or order. What can be culled out from the aforesaid definition that the moment the Court conclusively determines the rights of the parties with regard to all or any of the matters in controversy, the provision for an appeal under

Section 39 of the Act does not confer right upon the litigant to prefer an appeal against the judgment but provides a remedy by way of an appeal against all decrees passed under the aforementioned Chapters of the said Act.

In support of the aforesaid exposition of law, the judgment rendered by the Supreme Court in case of ***Banarsi & Ors. vs. Ram Phal*** reported in ***(2003) 9 SCC 606*** can be gainfully applied wherein it is held:

“8. Sections 96 and 100 CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the person who can file an appeal. However, it is settled by a long catena of decisions that to be entitled to file an appeal the person must be one aggrieved by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal. (See Phoolchand v. Gopal Lal, Jatan Kumar Golcha v. Golcha Properties (P) Ltd. and Ganga Bai v. Vijay Kumar.) No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 CPC provide for an appeal against decree and not against judgment.”

(emphasis supplied)

The appeal, therefore, is maintainable against the determination of all or any of the matters in controversy conclusively and finally and it is misconception that every statement made by the Judge in support of the said decree is amenable to be challenged by way of an appeal. The statement in support of final and conclusive determination would play a significant role in the event, the appeal is filed by a person who suffered the decree in an appeal filed by him. The “person aggrieved” has been interpreted in the plethora of judgments to mean a person who is affected by a decree of his right be it personal or otherwise which cannot be stretched to

such an extent that a person who obtained the decree in her favour is still regarded as a “person aggrieved” as she failed to prove the grounds enumerated under Section 27 of the said Act. An argument is sought to be made that either of the wife or the husband is entitled to decree for dissolution of marriage on the ground of desertion provided he or she has been deserted by the other side without any reasonable cause. It is, thus, submitted that she herself in her evidence deposed that she deserted the respondent and, therefore, the Court ought not to have been granted decree for divorce. The quality of evidence and the credibility and acceptance thereof is within the domain of a Judge and once the Judge has accepted and held that the grounds have been proved and ultimately passed a decree in favour of the wife, the wife is not competent to assail such decree as a “person aggrieved” that the Judge has mis-interpreted or wrongly interpreted the evidence adduced by her. Furthermore, the wife approached the Court seeking dissolution of marriage and the Court having granted such decree cannot take a rebound in the grab of a person aggrieved and assailed such decree passed in her favour that the decree could not have been passed. We are conscious that if any finding is made adverse to the litigator while passing a decree in her favour, has a right to assail such finding in the event, the said decree is assailed by the adverse party under Order 41 Rule 22 of the Code of Civil Procedure. The obvious reason for incorporation of such provision is that a successful litigant loses the right to assail the decree passed in her favour but in the event, any adverse finding or the finding affecting her is made in the said decree, on being challenged by the adverse party a right is created into a successful litigant to challenge

such finding under Order 41 Rule 22 of the Code. We, thus, do not find that the wife can maintain an appeal against the decree passed in her favour solely on the ground that the evidence adduced by her does not commend a decree to be passed in her favour. Therefore, an appeal being FAT 271 of 2023 is dismissed as not maintainable.

It raises a very interesting question in an appeal filed by the son of the parties through his maternal grandmother as a next friend.

Mr. Mukherjee, learned Senior Counsel in his usual eloquence ventured to propagate the unique concept in relation to Article 21 of the Constitution of India imbining within itself a right to life to extend to such a great height bestowing the power upon the individual (in this case minor son) to challenge the decree for dissolution of marriage granted by a competent Court in accordance with law. According to Mr. Mukherjee, right to life is an evolving concept encapsulating the various vagaries of meaningful life and cannot be restricted to a mere animal existence. Right to life enshrined under Article 21 of the Constitution of India recognizes the right to live with dignity and therefore, any action, be it executive or judicial, violating such right confers power upon a person to come within the definition of aggrieved person and consequently, have a right to challenge such action before the Court of law. According to Mr. Mukherjee the Courts in the country exercises apart from the other jurisdiction, the jurisdiction as *parens patriae* to protect the interest of the children of the sovereignty. He thus submits that the violation of any fundamental right enshrined in the

Constitution applicable to all citizenry including the infants or children bestowed power upon the Court to protect the same and, therefore, there is no impediment on the part of such child as “person aggrieved” to assail the decree for divorce. To elaborate the aforesaid notion, Mr. Mukherjee, learned Senior Advocate submits that the right to life imbibed within itself not only a right to live with dignity but a right to have a company of the parents who have an obligation to nurture their children in a congenial atmosphere or in other words in an atmosphere which every children expect in his life.

Mr. Mukherjee vociferously submits that every child has a right to the company of his/her parents for better upbringing which cannot be said to be unreasonable as several studies on a child psychology uniformly accepted such notion and therefore, the deprivation of the company of both the parents furthered such condition enshrined under Article 21 providing that no person shall be deprived of their right to life. The decree for divorce on the ground of desertion has a cascading effect on the fundamental right of a child and further the deprivation of such fundamental right recognized in the Constitution which brings such child as a person aggrieved and maintain a legal proceeding (appeal) against the decree passed by the Court. He, thus, submits that the appeal at the instance of a next friend (maternal grandmother) assailing the decree for dissolution of marriage passed under Section 27 of the Special Marriage Act is maintainable at the behest of the minor child.

Per contra, Mr. Kushal Chatterjee appearing for the husband-respondent submits that the appeal at the behest of a child of the litigating

parties through next friend is not maintainable more particularly, when litigating party or any of them as a natural guardian can take care of interest of a child in any legal proceeding. He further submits that the fundamental rights recognized under Article 21 of the Constitution of India is not an absolute or inchoate right as a language employed therein conveys a laudable intention that such right though fundamental is circumscribed by the established procedure of law. According to Mr. Chatterjee, the decree passed by the learned Trial Court on the ground of desertion which is one of such ground included in Section 13 of the Hindu Marriage Act cannot be regarded as a decision *de horse* the established procedure of law and, therefore, the appeal at the instance of a child is not maintainable. According to Mr. Chatterjee the right to life cannot be construed as a one way traffic and, therefore, have to be understood in a more rational way more particularly, when it is pitted against the fundamental right of an individual against another individual. Mr. Chatterjee further submits that either the husband or the wife enjoins a fundamental right to live in a dignified manner and therefore, in order to achieve such dignified life which in their wisdom not possible in the company of other, can take recourse to an established procedure of law in severing the knot through a decree for divorce.

Mr. Chatterjee further submits that there are several legislations enacted to protect the interest of a child (ward) as the welfare of the child is a paramount consideration and the Courts are vested with the power to exercise the *parens patriae* jurisdiction in this regard. Mr. Chatterjee

submits that in the event the argument advanced by the senior Advocate like Mr. Mukherjee is accepted, it would open a floodgate for all the child to assail a valid decree for dissolution of marriage granted by the competent Court even affirmed and confirmed up to the highest Court of the Country. Mr. Chatterjee submits that the appeal at the behest of a child through next friend is not maintainable and, therefore, to be dismissed.

For the purpose of record, it is made clear that arguments were also advanced by the Counsels appearing for the respective parties on the merit of the impugned judgment more particularly, on the nuances of law relating to a desertion as recognised in Section 13(1a) of the Hindu Marriage Act but we restricted our consideration on the maintainability of both appeals for the simple reason that in the event, this Court held that the appeals are not maintainable at the behest of the respective appellants, it would be a mere academic exercise to deal with the intricacies of the law relating to a desertion and leading to a decree for dissolution of marriage.

It would be apposite to quote Article 21 of the Constitution of India which runs thus:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Contextually the right to life is a basic fundamental right of all human being having somewhat linkage with the social human values as recognised in all civilised societies. The right to life is intricately related to a human life which any orderly society would preserve and therefore, is of a varied form. The discourse on the human right and its social values have been an

epicentre of debate and expanded his horizon to a considerable height and not restricted to a mere animal existence. In other words it is a declaration and recognition of a deep faith and belief in a human right which is worth living with dignity.

In ***Chameli Singh & Ors. vs. State of UP & Anr.*** reported in **(1996) 2 SCC 549**, the Apex Court held that the right to life cannot be squeezed to a need of a human being for his survival but a repository of an assurances to be provided for his or her development which every human being is designed to achieve in the following:

“8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used

as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.”

The right to life is a core of a fabric of the human values in an evolving civilised society and therefore cannot be said to be a static concept. Any action inhibiting the growth of an individual have a resultant effect in impeding the growth of a society and shall tantamount to deprivation. The human right which is a core of a right to life on birth since the existence of a human being as a derivative of a natural law by virtue of being human provided it is rational, reasonable and develop the capacity to reasons. Every human being cherish to live not only with dignity in the society but expect to live to acquire reputation which is intricately related to a dignity and therefore right to reputation has also been a basic values of the human right and held to be a fabric of a social order in the perspective of a right to life.

The Apex Court in case of ***State of Maharashtra vs. Public Concern for Governance Trust & Ors.*** reported in **(2007) 3 SCC 587** have expounded the concept of right to life as an adjunct of the right to reputation in the following:

“39. The party-in-person has also pointed out certain findings in the judgment of the High Court. We do not propose to go into the merits of the other contentions which are the subject-matter of Special Leave Petition No. 336 of 2006 In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play. Reputation of an individual is an important part of one’s life. It is observed in D.F. Marion v. Minnie Davis and reads as follows:

“The right to enjoyment of a private reputation, unassailed by malicious slander is of an ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.”

40. This Court also in Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni has observed that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.

41. It is thus amply clear that one is entitled to have and preserve one’s reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law, travels into the realm of personal reputation adversely affecting him. It must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of the principles of natural justice before

being adversely commented upon is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review.”

Mr. Mukherjee, learned senior Advocate stressed upon the observations as noted hereinabove in drawing an inference, that a child of a divorced parent shall lose its reputation and susceptible to be stigmatised. We are unable to comprehend the notion of losing the reputation and carrying in stigma solely on the notion that the parents have separated themselves through a process duly recognised by law. It may be an individualistic perception as everyone has a right to choose the way of his life and may develop a perception of his own which cannot be said to be the perception of a society at large.

The Special Marriage Act was enacted in order to maintain a social order and to give succour to an individual not to remain in a matrimonial institution if subjected to cruelty or otherwise. The grounds relating to dissolution of marriage has been vividly incorporated in the aforesaid statute which is neutral gender as any of the spouse can seek for dissolution of marriage provided the grounds enumerated in the said statute is proved before the Court of law. In the modern society, which is fast changing, does not recognise any kind of an aversion on child of a divorced parent. The conservative thinking of the society has been completely eroded and we are keeping pace with the advanced thinking of the society recognising the individual's fundamental rights as recognised in law.

Special Marriage Act was enacted not only to preserve and protect the matrimonial institution and to procreate the future race, but also to protect

the individual's right to live with dignity by dissolving the marriage on the grounds enumerated therein. Any attempt to compel the spouse to remain in a matrimonial institution despite being deserted or subjected to cruelty or of other grounds recognised in the said statute, would be unjust enrichment of their constitutional and the statutory right. The orthodox concept of losing the reputation as a child of a divorced parent shall inhibit the growth and the advancement achieved by the society at large but shall also impinge upon the right of a person to choose the way of their life which is rational, reasonable and permissible in law. Though the reputation is an important facet of an individual's life but the same cannot be extended to a situation that it has a greater impact on a child of the divorced parent. We are therefore unable to countenance the submission of Mr. Mukherjee that the child of a divorced parent has a right to protect his reputation only when he is in the association of the parents living together under the one roof and a stigma would be put if they are divorced.

The right of every child (ward) is to be protected and the welfare is to be ensured by a Court exercising the *parens patriae* jurisdiction. Neither the Guardians and Wards Act nor the Hindu/Special Marriage Act put any obstacle in the Court while exercising such jurisdiction and passing an order for the welfare of the child. The child does not lose the company of the parents even after the divorce as it is a moral, social and statutory obligation of the parents or either of them to take care of his or her well being and to provide all support for his/her development and the growth in life. Article 21 does not apply in an order of precedence or preference. Every individual

enjoins such fundamental right and the only protection provided therein is against the deprivation unless by an established procedure of law. We are, therefore, unable to accept the contention of Mr. Mukherjee that Article 21 of the Constitution of India is to apply in order of preference and the right of a child to live with dignity stands on a higher pedestal than a right to life of other individual in this case the parents.

In ***Sumedha Nagpal vs. State of Delhi & Ors.*** reported in **(2000) 9 SCC 745** the Apex Court was considering the writ petition filed under Article 32 of the Constitution of India at the behest of the mother of a minor child claiming custody alleging the deprivation by the father under the Hindu Minority and Guardianship Act. The Apex Court held:

“6. Before parting with the case, we cannot but express our deep anxiety over the matter. No decision by any court can restore the broken home or give a child the care and protection of both dutiful parents. No court welcomes such problems or feels at ease in deciding them. But a decision there must be, and it cannot be one repugnant to normal concepts of family and marriage. The basic unit of society is the family and that marriage creates the most important relation in life, which influences morality and civilization of people, than any other institution. During infancy and impressionable age, the care and warmth of both the parents are required for the welfare of the child and we do hope that in this case the petitioner and Respondent 2, the parents, would realise what their responsibility should be and set right their broken home for the sake of the child.”

It has been elucidated in the above report that the Courts cannot resuscitate or restore the broken home nor can mandate the care and protection of both the responsible parents despite being aware that such disputes or the problems are not welcome. The Apex Court was not oblivion

of the fact that during formative stage a child requires care, protection, warmth and love of parents but showed his inability to pass any such order leaving it to the wisdom of the parents to figure out their responsibilities and the impact in the child because of the broken relationship. The inspiration which this Court may draw from the above observations is that it is within the collective wisdom of the parents to take an individual decision regarding the development and the growth of the child if their matrimonial relationship has fallen out but certainly does not confer any power upon the child to assail the decree for divorce taking aid of Article 21 of the Constitution of India.

It takes us to another point whether an appeal at the behest of a minor child through its next friend (maternal grandmother) is maintainable solely on the ground that the child is an aggrieved person. In this regard, the judgment rendered by the Apex Court in **Baldev Singh vs. Surinder Mohan Sharma & Ors.** reported in **AIR 2003 SC 225** may be noticed. In the said case the third party to a matrimonial institution challenged the decree for divorce and the Apex Court held:

“11. ‘Locus’ of a person to prefer an appeal in a matter of this nature is vital as the right of privacy of two spouses would be interfered thereby. The Court cannot enlarge the scope of ‘locus’ in a case of this nature where the parties are fighting litigations. Allegations made by the first respondent in his revision application does not disclose any cause of action for maintaining the said application nor does it state as to how and in what manner he would be prejudiced if the impugned judgment is allowed to stand. In the aforementioned premise bona fide of the first respondent was also required to be determined by the High Court. Having regard to

the facts and circumstances of the case, we are of the opinion that the application filed by the first respondent before the High Court was not a bona fide one but was filed in furtherance of the pending disputes between the parties.”

We are not unmindful of the proposition that a non-party to a proceeding can prefer an appeal provided the judgment and decree adversely affects him as held by the Apex Court in case of **Hardevinder Singh vs. Paramjit Singh & Ors.** reported in **(2013) 9 SCC 261** :

*“17. Presently, it is apt to note that Sections 96 and 100 of the Code make provisions for preferring an appeal from any original decree or from a decree in an appeal respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. If a judgment and decree prejudicially affects a person, needless to emphasise, he can prefer an appeal. In this context, a passage from **Jatan Kumar Golcha v. Golcha Properties (P) Ltd.** is worth noting:*

‘3. ... It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment.’

*18. In **State of Punjab v. Amar Singh, Sarkaria, J.**, while dealing with the maintainability of an appeal by a person who is not a party to a decree or order, has stated thus:*

*‘83. Firstly, there is a catena of authorities which, following the [doctrine] of **Lindley, L.J.**, in **Securities Insurance Co., In re** have laid down the rule that a person who is not a party to a decree or order may with the leave of the court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it., as a rule, leave to appeal will not be refused to a person who might have been made co nomine a party [see **Province of Bombay v. Western India Automobile Assn.**, **Heersing v. Veerka**, **Shivaraya v. Siddamma**, **Sri Padmanabhaswamy Temple***

v. Raghavan Pillai, B. (An Infant), In re and S. Govinda Menon v. K. Madhavan Nair]'

19. In Baldev Singh v. Surinder Mohan Sharma a three-Judge Bench opined that an appeal under Section 96 of the Code would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. In the said case, while dealing with the concept of 'person aggrieved', the Bench observed thus:

'15. ... A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned. It is not the contention of Respondent 1 that in the event the said judgment and decree is allowed to stand, the same will cause any personal injury to him or shall affect his interest otherwise.

Be it noted, in the said case, the challenge in appeal was to the dissolution of the marriage of the appellant therein and his first wife which, this court held, would have no repercussion on the property in the suit and, therefore, the High Court was not justified in disposing of the civil revision with the observation that the revisionist could prefer an appeal."

The Apex Court in case of **V.N. Krishna Murthy & Anr. Vs. Ravikumar & Ors.** reported in **(2020) 9 SCC 501** held that the expression the 'person aggrieved' cannot be brought within a straight-jacket formula being flexible depending upon the facts of the case. It cannot bring a person within that expression solely on the ground that the judgment and decree would cause psychological or emotional injury in the following:

"19. The expression 'person aggrieved' does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore,

necessarily be one, whose right or interest has been adversely affected or jeopardised (vide Shanti Kumar R. Canji v. Home Insurance Co. of New York and State of Rajasthan v. Union of India)."

From the above observation, it appears that the proceeding for dissolution of marriage under the statute is restricted to a party to such institution and interference by any third party would impinge upon a right to privacy and, therefore, the alien to a matrimonial institution, cannot be said to be a person aggrieved. Though the child is born of the wedlock within the matrimonial institution yet, is regarded as an alien *vis-a-vis* the individual's right of the parent to seek for divorce and, therefore, cannot be regarded as a person aggrieved.

We thus do not find that the appeal at the instance of the child of the litigating spouse has any right to challenge the decree for divorce granted under the Special Marriage Act and, therefore, the appeal is not maintainable.

In view of the findings made hereinabove both the appeals are dismissed as not maintainable.

The aforesaid revisional application which is assigned to this Court is filed by the appellant in FAT 371 of 2023 assailing the order by which an application was reviewed and rejected by the Trial court. The said revisional application is assigned to this Bench to be heard along with the aforesaid appeals. It appears that challenging the self-same judgment and decree for dissolution of marriage a review application was filed before the Trial Court and the same was dismissed.

In view of the findings returned hereinabove that a successful litigant cannot maintain an appeal, as a corollary effect, such litigant cannot maintain a review application as it does not satisfy the definition of an aggrieved person and, therefore, the revisional application is also dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)