

**(1968) 03 AHC CK 0017**

**Allahabad High Court**

**Case No:** F.A.F.O. No. 41 of 1963

Maharaj Singh

APPELLANT

Vs

Smt. Uma Singh

RESPONDENT

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**Date of Decision:** March 2, 1968

**Acts Referred:**

- Special Marriage Act, 1954 - Section 36, 39

**Citation:** AIR 1969 All 603 : (1968) 38 AWR 329

**Hon'ble Judges:** Jagdish Sahai, J; Gangeshwar Prasad, J

**Bench:** Division Bench

**Advocate:** B.R. Tripathi, for the Appellant; A. Banerji, for the Respondent

**Final Decision:** Disposed Of

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### **Judgement**

Jagdish Sahai, J.

In this case the question referred to us by a learned single Judge of this Court is:--

"Does an appeal lie against an order passed on an application u/s 36 of the Special Marriage Act, 1954?"

Section 36 of the Special Marriage Act, 1954 (hereinafter referred to as the Act) reads:--

"Where in any proceeding under Chapter V of Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as, having regard to the husband's income, it may seem to the court to be reasonable."

Section 39 of the Act reads:--"All decrees and orders made by the court in any proceeding under Chapter V or Chapter VI shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction

are enforced and may be appealed from under the law for the time being in force:

Provided that every such appeal shall be instituted within a period of ninety days from the date of the decree or order."

2. This provision is *pari materia* with Section 28 of the Hindu Marriage Act. The words used therein are "may be appealed from under any law for the time being in force." The difference between the two provisions is that u/s 28 of the Hindu Marriage Act the word used is "any" instead of "the". There is no substantial difference in the language of the two provisions. We have already held in Civil Revn. No. 910 of 1965 [Smt. Sarla Devi Vs. Shri Balwan Singh](#), 1 that an appeal lies u/s 28 of the Hindu Marriage Act against an order passed u/s 24 of the same Act.

3. For the reasons given in that judgment we hold that an appeal lies u/s 39 of the Act against an order passed u/s 36 of the Act. We are of the opinion that in the present case the appeal was competent. Let the papers be returned to the learned single Judge with the answer aforesaid.