

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

Friday, the 10<sup>th</sup> day of March 2023 / 19th Phalguna, 1944

IA.NO.1/2022 IN RSA NO. 656 OF 2022

OS 106/2015 OF ADDITIONAL SUB COURT, KOTTAYAM

AS 36/2021 OF ADDITIONAL DISTRICT COURT- V, KOTTAYAM

APPLICANTS/APPELLANTS IN RSA:

1. THE METROPOLITAN ARCHBISHOP, THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITAN'S HOUSE, KOTTAYAM-686 001, THE PRESENT METROPOLITAN ARCHBISHOP IS MOST REV. MAR MATHEW MOOLAKKATT.
2. THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITAN HOUSE, PB NO.71, KOTTAYAM, KERALA-686 001, REPRESENTED BY THE METROPOLITAN ARCHBISHOP.

RESPONDENTS/RESPONDENTS IN RSA:

1. KNANAYA CATHOLIC NAVEEKARANA SAMITHY, VALTHARN BUILDING (NEAR VILLAGE OFFICE), KUMARAKOM P O., KOTTAYAM, PIN - 686563. REP. BY ITS PRESIDENT WHO IS ALSO RESPONDENT NO.2.
2. T.O. JOSEPH AGED 70, S/O. OUSEPH, THOTTUMKAL HOUSE, KANNANKARA P O., THANNERMUKKAM NORTH VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT. PIN - 688527.
3. LUKOSE MATHEW K., AGED 65, S/O.MATHEW, KUNNUMPURATHU HOUSE, KURICHITHANAM P.O., KURICHITHANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT. PIN-686635.
4. C.R. PUNNEN, AGED 68, S/O. KURUVILLA , CHIRAYIL HOUSE, ATHIRAMPUZHA P O., KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN - 686562. REP. BY HIS POWER OF ATTORNEY HOLDER V.C. MATHAI.
5. THE MAJOR ARCH BISHOP, SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH, MOUNT ST. THOMAS, KAKKANAD P O., P.B. NO.3110, KOCHI, THE PRESENT MAJOR ARCHBISHOP IS HIS BEATITUDE MAR GEORGE CARDINAL ALENCHERRY. PIN - 682030.
6. SYNOD OF THE BISHOP OF THE SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH, MOUNT ST. THOMAS, KAKKANAD P O., P.B. NO. 3110, KOCHI, REP.BY ITS SECRETARY. PIN - 682030.
7. CONGREGATION FOR THE ORIENTAL CHURCHES VIA DELLA CONCILIAZIONE 34, 00193, ROMA, ITALY, REP.BY ITS PREFECT.
8. CONGREGATION FOR THE DOCTRINE OF FAITH PIAZZA DEL S.UFICIO-II, 00139, ROMA, ITALY, REP.BY ITS PREFECT.
9. KNANAYA CATHOLIC CONGRESS, KOTTAYAM, REP. BY PRESIDENT STEPHEN GEORGE, S/O. GEORGE, VELIYATH HOUSE, KURUMULLOOR P.O, ONAMTHURUTHU VILLAGE, KOTTAYAM. PIN - 686632.
10. JOHNY KURUVILLA, AGED 69, S/O. P.P.KURUVILLA, PADICKAMYALIL HOUSE, KADAPLAMATTAM P.O., KOTTAYAM. NOW RESIDING AT T.C.12/1773/4, MULAVANA, KUNNUKUZHY, THIRUVANANTHAPURAM DISTRICT, PIN - 695034.
11. DOMINIC SAVIO, AGED 63, S/O. V.C. KURUVILLA, VACHACHIRAYIL, KUZHIMATTOM P.O., PANACHIKKADU, KOTTAYAM DISTRICT. PIN - 686533.
12. BENNY JACOB, AGED 56, S/O. E.K.CHACKO, ILLICKAL HOUSE, CHUNKOM KARA,

KOLANI P.O., IDUKKI DISTRICT, PIN - 685608.

13. BIJU UTHUP, AGED 62 YEARS, S/O. UTHUP, RESIDING OF 62, 10TH MAIN, 7TH CROSS, HORAMAVU ROAD, NANDANAM COLONY, BANGALORE-560043.
14. JAMES JOSEPH K, AGED 62 YEARS, S/O. JOSEPH, KATTUVEETIL HOUSE, NAGAMPADOM, NATTASSERY KARA, PERUMPAIKADU VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT, PIN-686002.
15. KNANAYA ROYAL COMMUNITY, REPRESENTED BY ITS MANAGING TRUSTEE JOSE THOMAS, AGED 54 YEARS, S/O THOMAS, ENNAMPLASSERIL HOUSE, UZHAVOOR PO, UZHAVOOR KARA, UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM. PIN - 686634.
16. JOYAN P.SAIMON, AGED 50 YEARS, S/O. P.J. SAIMON, POWAT, KUMARAKOM P.O, KUMARAKOM VILLAGE, KOTTAYAM -686563.
17. TOBIN GEORGE, AGED 48 YEARS, S/O. GEORGE JOSEPH, MELUVALLIL HOUSE, KUMARAKOM P.O., KUMARAKOM VILLAGE, KOTTAYAM-686563.
18. PHILU THOMAS, AGED 47, S/O.THOMAS, HOUSE NO. 145-43, THOMAS LAY OUT (BLOCK), CARMILARAM POST, BANGALORE URBAN DISTRICT, BANGALORE SOUTH TALUK, BANGALORE - 560035.
19. ALEX J VICTOR, AGED 41 YEARS, D-102, CONCORDE MIDWAY CITY APTS, HOTSIA ROAD, BASAPURA VILLAGE, BANGALORE - 560074.
20. SIBY JOSE, AGED 48 YEARS, #409/5, 20TH D CROSS, EJIPURA MAIN ROAD, VIVEKANANGER POST, BANGALORE, PIN - 560047.
21. SUNNY KURUVILLA, AGED 65 YEARS, #242, ASHIANA, 6TH MAIN, 7TH CROSS, ST BED KORMANGALA, 4TH BLOCK, BANGALORE-560034.
22. ROBY K KUNJOONJU, AGED 56 YEARS, 17/A, 12TH MAIN, SECTOR-1, NOBONAGAR, BANGALORE, PIN - 560076.
23. CYRIAC THOMAS, AGED 47 YEARS, NO. 32, 1ST FLOOR, 6TH CROSS BHAVANINAGAR, S-G PALAYA, DRC POST, BANGALORE. PIN - 560029.
24. REJI C JOSEPH, AGED 57 YEARS, NO. 24, TRINITY HOME, S G PALAYA, CV RAMAN NAGAR, BANGALORE. PIN - 560029.
25. CYRIAC JOSEPH, AGED 52 YEARS, SOBHA DALIYA, OUTER RING ROAD, BELLANDLOOR, BANGALORE. PIN - 560103.
26. JOJI GEORGE, AGED 40 YEARS, G-201, HOLYHOK APARTMENTS, DADDYS SOUTH BOURG LAYOUT, HEBBAGODY, BANGALORE - 560099.
27. SANTHOSH SIMON, AGED 42 YEARS, C-002, DADDY'S DALIYA, DADDYS SOUTH BOURG LAYOUT, HEBBAGODY, BANGALORE - 560099.
28. SIBIMON JOSE, AGED 56, THOTTAPLAKKIL HOUSE, LAKE VIEW ENCLAVE LAYOUT, SEEG HALLI, VIRGNONAGAR, BANGALORE-49.
29. TIBIN THOMAS, SECRETARY, KNANAYA GLOBAL PARLIAMENT, CHETTAI.COM, XII/ 203 A, PERUMBAIKKADU VILLAGE, S.H MOUNT P O, KOTTAYAM. PIN - 686006.
30. THE KNANAYA SAMUDAYA SAMRAKSHANA SAMITHI (KSSS), REP. BY ITS PRESIDENT, ABRAHAM NADUVATHARA, AGED 72, S/O N.I. ABRAHAM, RESIDING AT NADUVATHARA HOUSE, PEROOKADA P.O., THIRUVANANTHAPURAM DISTRICT. PIN - 695005.
31. LAMBOCHAN MATHEW, AGED ABOUT 61 YEARS, S/O LATE P.C. MATHEW, PANNIVELIL HOUSE, KADUTHURUTHY KARA, KADUTHURUTHY VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT. PIN - 686604.
32. JOSE MATHEW, AGED ABOUT 54 YEARS, S/O LATE P.K MATHAI, ARUPARAYIL HOUSE, PEROOR P.O., KOTTAYAM DISTRICT, PIN - 686637.
33. PHILIP CHACKO, AGED ABOUT 66 YEARS, S/O LATE K.U CHACKO, KUSUMALAYAM

- HOUSE, KUMARAKOM P.O., KOTTAYAM DISTRICT. PIN - 686563.
34. KNANAYA CATHOLIC CONGRESS, KOTTAYAM, REP. BY ITS PRESIDENT, THOMAS K.L., AGED 70 YEARS, S/O LUKA, ERUMELIKKARA, PURAPPUZHA, VAZHITHALA P.O., PURAPPUZHA VILLAGE, THODUPUZHA TALUK, IDUKKI DISTRICT, PIN - 685583.
  35. THOMAS VATTAKKALAM, AGED ABOUT 65 YEARS, S/O CHANDY CHACKO, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT, PIN - 685608.
  36. JOSE M.J., AGED ABOUT 51 YEARS, S/O JOSEPH, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT A 14/F-1,2, DILSHAD COLONY, JHILMIL H.O., EAST DELHI, DELHI FROM MECHERY HOUSE, VELLANIKKARA P.O., THRISSUR TALUK, THRISSUR DISTRICT, REP. BY POA HOLDER THOMAS VATTAKKALAM, AGED ABOUT 65 YEARS, S.O CHANDY CHACKO, VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT. PIN -685608.
  37. TOMY THOMAS, AGED 60 YEARS, S/O THOMAS, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2208 CLUBHOUSE DRIVE, PLANT CITY, FLORIDA, 33566, USA, FROM MYALKARAPURATHU HOUSE, MARIKA P.O., KOOOTHATTUKULAM, ERNAKULAM DISTRICT, REP. BY POWER OF ATTORNEY HOLDER, SHAJU JOHN, AGED 58, S/O K.M. JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN - 686634.
  38. JOY MATHEW, AGED 52 YEARS, S/O CHACKO MATHEW, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2822, WEST PEBBLE BEACH DRIVE, MISSOURI CITY, TEXAS - 77459, USA, FROM VELLAMTHADATHIL HOUSE, PUTHUVELY P.O., KOTTAYAM DISTRICT, PIN 686636. REP. BY POWER OF ATTORNEY HOLDER SHAJU JOHN, AGED 58, S/O K.M. JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENCHIL TALUK, KOTTAYAM DISTRICT, PIN - 686634.
  39. SONNY JOSEPH, AGED 67, S/O JOSEPH POOZHICALA, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 2453, TESLA CRES, OAKVILLE ONTARIO, CANADA- L6H7T6 FROM POOZHICALA HOUSE, KIDANGOOR SOUTH P.O., KOTTAYAM, REP. BY POWER OF ATTORNEY HOLDER THOMAS VATTAKKALAM, AGED 64, S/O CHANDY CHACKO, VATTAKKALAM HOUSE, KOLANI P.O., THODUPUZHA, IDUKKI DISTRICT, PIN-685608.
  40. JIMMI CHERIAN, AGED 62, S/O CHERIAN MOZHIKODATHU, MEMBER, HOUSE, KNANAYA GLOBAL FORUM, NOW RESIDING AT 65 KNUTTON CRESCENT, SHEFFIED, S5, (NX, UK FROM MOZHIKODATHU ERAVIMANGALAM P.O., VAIKOM, KOTTAYAM, REPRESENTED BY POWER OF ATTORNEY HOLDER STANLEY KURIAN, AGED 60, S/O KURIAN RESIDING AT KONNANIKKAL HOUSE, MULAKULAM P.O., MULAKKULAM VILLAGE, PERUVA, KOTTAYAM. PIN - 686610.
  41. SOBAN THOMAS, AGED 42, S/O P.A. THOMAS, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT 26, MACKELLAR AVENUE, WHEELERS HILL, VIC - 3150, MELBOURNE, AUSTRALIA, FROM POOZHIKUNNEL HOUSE, PERUMPAIKKADU P.O., KOTAYAM, REPRESENTED BY POWER OF ATTORNEY HOLDER, SHAJU JOHN, AGED 58, S/O K.M. JOHN, ANCHAKUNNATH HOUSE, UZHAVOOR P.O., UZHAVOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT, PIN - 686634.
  42. SHIBU PAUL, AGED 48 YEARS, S/O M C PAUL, MEMBER, KNANAYA GLOBAL FORUM, NOW RESIDING AT VIA GORGONA 48, ROMA, ITALY, FROM MANITHOTTIYIL HOUSE, MEMURY P.O., KURUPPANTHARA, KOTTAYAM DISTRICT, REPRESENTED BY POWER OF ATTORNEY HOLDER STANLEY KURIAN, AGED 60, S/O KURIEN, RESIDING AT KOANICKKAL HOUSE, MULAKULAM P.O., MULAKKULAM

VILLAGE, PERUVA, KOTTAYAM. PIN - 686610.

43. FR. BYJU MATHEW ALIAS BYJU MUKALEL, AGED ABOUT 43 YEARS, S/O M L MATHAI, MSP SEMINARY, S.H MOUNT P.O., KOTTAYAM DISTRICT, PIN - 686006.
44. CHACKO THEKKEDATH JOSEPH, AGED 71, S/O JOSEPH, RESIDING AT THEKKEDATH HOUSE, MANAKKAD P.O., CHUNGAM KARA, THODUPUZHA VILLAGE, IDUKKI DISTRICT, PIN - 685608.
45. LUKOSE P.U., MEMBER, KNANAYA CATHOLIC CONGRESS OF CENTRAL FLORIDA(KCCCF), AGED ABOUT 77 YEARS, S/O ULAHANNAN, RESIDING AT PATTARAPARAMBIL HOUSE, THELLAKOM P.O., ADICHIRA, PERUMBAIKKADU VILLAGE, KOTTAYAM DISTRICT, NOW RESIDING AT 7125, COLONIAL LAKE DRIVE, RIVER VIEW, FLORIDA, 33578, USA.

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to stay the operation of all proceedings in execution of the judgment and decree dated 30-04-2021 of the Addl.Subordinate Judge's Court,Kottayam in O.S No.106 of 2015 as confirmed in A.S No. 36 of 2021 and connected cases on the file of the Addl.District Judge's Court-V,Kottayam pending disposal of the above Regular Second Appeal.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof,and this Court's order dated 04.11.2022 and upon hearing the arguments of P.B.KRISHNAN, P.B.SUBRAMANYAN, SABU GEORGE, MANU VYASAN PETER, ABRAHAM BABU KALLIVAYALIL, JACOB E SIMON, Advocates for the petitioners and of ADVS. KALEESWARAM RAJ, THULASI K. RAJ, SHILPA SOMAN,Advocates for R2 and of ADVS.N.M.MADHU, C.S.RAJANI,Advocates for R3,and of SRI. Agi Joseph,Advocate for R5 & R6,and of ADVS. T.KRISHNANUNNI (SR.), MEENA.A., VINOD RAVINDRANATH, K.C.KIRAN, M.R.MINI, M.DEVESH, ASHWIN SATHYANATH, ANISH ANTONY ANATHAZHATH, THAREEQ ANVER K.,Advocates for R9,and of ADVS. SIVAN MADATHIL, MARGARET MAUREEN DROSE,Advocates for R10,R11 & R12,and of ADVS. P. THOMAS VARGHESE , TONY THOMAS (INCHIPARAMBIL), E.S.FIROS,Advocates for R16 & R17,and of ADVS. MILLU DANDAPANI, SUNDEEP ABRAHAM,Advocates for R29,and of ADVS. REJI GEORGE GEORGE, RAJEEV.P.NAIR, CHACKO SIMON,Advocates for R31,and of FIROZ K.M., M.SHAJNA,Advocates for R43, the court passed the following:

**M.R.ANITHA, J**

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I.A.No.01 of 2022 in R.S.A.No.656 of 2022

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Dated this the 10<sup>th</sup> day of March, 2023

**ORDER**

Petition has been filed under Order 41 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 to stay the operation of all proceedings in execution of the judgment and decree in O.S.No.106/2015 on the file of Subordinate Judge's Court, Kottayam as confirmed in A.S.No.36/2021 on the file of Additional District Judge's Court, Kottayam.

2. Appellants are defendants Nos.1 and 2. First appellant filed supporting affidavit for and on behalf of the second appellant/second defendant. The suit is for declaration, permanent prohibitory injunction and mandatory injunction. First appellate court confirmed the decision of the trial court with some modification regarding the finding of the trial court in certain aspects. It is contended that the decisions of the courts below would overturn and uproot the practice and custom followed in Knanaya Community for over seventeen centuries.

The decision, if enforced, will destroy the ethnic identity of the community and all those who were permitted on their application to join the parishes of their spouses would have to be taken back by causing great discontentment in the community and if the decree were to be enforced pending this appeal, it will lead to irreparable injuries. It is also argued that, during the pendency of the suit, there was no interim order and the first appellate court granted stay at the time of admission of the appeal and thereafter, as per the order in O.P.(C) No.1451/2021 this Court modified the interim stay order on 01.11.2021. Hence the petition to stay the operation of all proceedings in execution of the judgment and decree in O.S.No.106/2015.

3. Learned senior counsel for the 9<sup>th</sup> defendant who has filed separate R.S.A.No.23/2023, would contend that the decree of injunction passed by the courts below are not one that could be enforced as per Order XXI Rule 32(5). It is contended that, even if the injunction granted is violated by defendants 1 and 2, the enforceable method is only to send Archeparchi to prison and an amin cannot be deputed to conduct marriage as done by the

defendant and hence, according to him, an injunction which could not be enforced ought not have been granted by the courts below.

4. Senior counsel for additional 12<sup>th</sup> respondent would contend that endogamy has been found as a custom admittedly being followed from 1911 and it has a force of law. There is no evidence of ex-communication and Pw1 during evidence admitted that he took membership of another church and joined another church under Zyro Malabar Sabha and hence findings made by first appellate court in that regard is illegal and perverse.

5. 2<sup>nd</sup> respondent/2<sup>nd</sup> plaintiff filed counter affidavit for and on behalf of 1<sup>st</sup> respondent/1<sup>st</sup> plaintiff. It is contended that the suit has been filed complying Order 1 Rule 8 to stop the cruel practice of expelling the members from the Catholic Archeparchy of Kottayam and the 2<sup>nd</sup> defendant contended that the alleged claim of lack of blood purity for their spouse and to stop the denial of the holy sacrament of marriage to the members marrying Catholic members of other dioceses. It is contended that due to the unlawful and unprecedented practice resulting in

expulsion of members who marry catholics outside the diocese and their family consisting of thousands of women and children are the victims and they are living life like second class citizens without any religious rights and condemned by the clergy. It is contended that their life is without any dignity and liberty guaranteed under the fundamental rights of the constitution and the clergy refuses sacraments and was not even allow them to participate in the prayer meetings and the clergy is also refusing to conduct religious prayer services in their homes. It is also contended that due to this practice, middle aged persons are also remaining unmarried due to lack of brides available in 2<sup>nd</sup> defendant for fear of expulsion from the Church. It is further contended that on considering the pleadings, oral and documentary evidence, courts below decreed the suit finding that practice of endogamy and resultant expulsion of members from 2<sup>nd</sup> defendant is in violation of fundamental rights guaranteed to the citizens under the constitution as also human rights violation and by filing petition for stay, defendants 1 and 2 wanted to continue the perpetuation of violation of fundamental rights and



human rights of the members and former members of the 2<sup>nd</sup> defendant church. After the concurrent judgments of the courts below former members who are senior citizens expect that their dead body can be buried in the family cemetery built by them and their parents in which their parents and grand parents are laid to rest. According to them, no substantial question of law arise for consideration and the same grounds are repeated as in the first appeal and when fundamental rights of citizen in the constitution is violated, no substantial question of law can defeat such a right. Hence, they pray for dismissal of the petition.

6. **Kaushal Kishor v. State of Uttar Pradesh : 2023 SCC Online SC 6** has been relied on by the learned counsel for 1<sup>st</sup> and 2<sup>nd</sup> respondent to support his contention. Therein the question arouse was whether minister's statement can be vicariously attributed to Government and it has been held by the Constitution Bench that a statement made by a Minister even if traceable to any affairs of the State or for protecting the Government, cannot be attributed vicariously to the Government by invoking the principle of collective responsibility with a dissent

of one Hon'ble Judge. The above decision was cited by the learned counsel to highlight the position that fundamental right under Article 19 or 21 can be enforced even against persons other than the State or its instrumentalities.

7. In **Central Board of Dawoodi Bohra Community v. State of Maharashtra : 2023 SCC Online SC 130** cited by the learned counsel, five Bench Judge of the Apex Court doubts the correctness of the decision in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay : (1962) Suppl. (2) SCR 496* which struck down the Bombay Protection of Ex-communication Act, 1949. In that decision, the Constitution Bench of the Apex Court was of the view that protection under Article 26(b) of the Constitution of India granted by the decision in the case of *Sardar Syedna Taher* giving the power to ex-communicate a member of the Dawoodi Bohra community, needs reconsideration as the said right is subject to morality which is understood as Constitutional morality. This issue will require examination by a nine-Judge Bench and accordingly that writ petition was tagged with Review Petition (Civil) No.3358 of 2018. It has not attained finality and moreover, the finding of the first appellate court from the attending circumstances of the case that there is ex-

communication on marrying a non-Knanaya member from the defendant church is also seriously disputed by the counsel for the defendants because according to them, first plaintiff is a society and second and third plaintiffs have voluntarily left the church in 1975 and 1988 respectively and 4<sup>th</sup> plaintiff still continues as a member of the church and hence they have got a specific contention that the case of ex-communication is not at all proved in the present case. Some portion of the evidence of PW1 was also brought to my attention in this regard at the time of hearing to contend that he voluntarily left the church prior to the marriage. It is also contended that no such issue has been raised by the trial court.

8. **Inox Leisure Limited v. PVR Limited : CS(OS) No.196/2018 dated 18/05/2020** of the Delhi High Court was further brought to my attention and paragraph 22 of the said decision was also highlighted. But it has no relevance to the case in hand.

9. 3<sup>rd</sup> respondent filed separate counter affidavit raising similar contentions. Learned counsel for the third respondent also brings to my attention **Raghavendra Swamy Mutta v.**

**Uttaradi Mutt : (2016) 11 SCC 235** wherein the Apex Court held that no interim order or interim relief can be granted, unless second appeal is duly admitted upon formulation of substantial question of law. Paragraph No.18 was highlighted by the learned counsel which reads thus:

*"18. In the instant case, the High Court has not yet admitted the matter. It is not in dispute that no substantial question of law has been formulated as it could not have been when the appeal has not been admitted. We say so, as appeal under Section 100 CPC is required to be admitted only on substantial question/questions of law. It cannot be formal admission like an appeal under Section 96 CPC. That is the fundamental imperative. It is peremptory in character, and that makes the principle absolutely cardinal. The issue that arises for consideration is; whether the High Court without admitting the second appeal could have entertained IA No. 1/2015 which was filed seeking interim relief. In Ram Phal (supra), from which Mr.Nariman, learned senior counsel has drawn immense inspiration, the two-Judge Bench was dealing with a case where the High Court had granted an interim order by staying the execution of the decree but had not framed the substantial*

*question of law. In that context, the Court held:-*

*"... However, the High Court granted interim order by staying the execution of the decree. It is against the said order granting interim relief the respondent in the second appeal has preferred this appeal. This Court, on a number of occasions, has repeatedly held that the High Court acquires jurisdiction to decide the second appeal or deal with the second appeal on merits only when it frames a substantial question of law as required to be framed under Section 100 of the Civil Procedure Code. In the present case, what we find is that the High Court granted interim order and thereafter fixed the matter for framing of question of law on a subsequent date. This was not the way to deal with the matter as contemplated under Section 100 CPC. The High Court is required to frame the question of law first and thereafter deal with the matter. Since the High Court dealt with the matter contrary to the mandate enshrined under Section 100 CPC, the impugned order deserves to be set aside."*

10. As per the above, the Apex Court laid down the principle that High Court is not empowered to grant an interim order unless second appeal is duly admitted upon formulation of

substantial question of law. But, in the present case, the case was actually came up for admission on 04.11.2022. Learned counsel for the caveator/respondents 1 and 2 sought for three weeks time for admission hearing. Learned counsel for the appellant pressed for an interim arrangement since the decree passed by the courts below according to the learned counsel has far reaching consequence and according to him, various substantial questions of law are involved and almost 54 substantial questions of law have been formulated by the appellant in the appeal memorandum. In the said circumstances, as an interim arrangement, this Court directed both sides on consent to maintain direction No.1 in O.P.(C) No.1451/2021 dated 01.11.2021 which was filed by plaintiffs 1, 2 and 4 in the suit against the interim order of stay granted by the first appellate court at the time of admitting the appeal. Direction No.1 in O.P.(C) No.1451/2021 reads thus:

“If any member of a church under the Kottayam Archeparchy wishes to marry a Catholic from another diocese, he/she can make a request to respondents 1 and 2 for issuance of Vivaha Kuri

or no objection certificate. On receipt of the request, respondents 1 and 2 shall issue the Vivaha Kuri or no objection certificate, without insisting on any letter of relinquishment of that person's membership with the Kottayam Archeparchy. The question whether the person has forfeited his/her membership in the Kottayam Archeparchy on account of the marriage will depend upon and abide by the judgment in the appeal."

11. Respondent Nos.5, 6, 10, 11, 16, 17, 29, 31 and 43 also entered appearance through counsel though no separate argument was advanced.

12. The appeal has been admitted by this Court on various substantial questions of law formulated by this Court. On going through the judgment passed by the courts below, it could be seen that though the first appellate court confirmed the judgment and decree and dismissed the appeal, there are some divergent findings in some material issues. The trial court found that defendants failed to establish that the Church Law support the practice of endogamy in Knanaya community. It is also found that Knanaya

community will not come under the religious denomination of Article 26 of the Constitution of India. Whereas the first appellate court found that custom of endogamy is a marriage custom prevailing in Knanaya community and in the absence of any statutory law, the custom would hold the field under Article 13 of the Constitution of India and therefore, the custom of endogamy never violates the fundamental right of privacy guaranteed under Article 21 of the Constitution of India. It is also found that canon law 6(2) and 1509 approved the centenary or immemorial customs and therefore a custom which is found to have been followed for the last 100 years gets approval even from the canon law itself. It is also found that the custom of endogamy is intended to preserve the culture and purity of the community and as such they have every right to preserve it under Article 29 of the Constitution of India and ultimately it was found that custom of endogamy is valid custom in the community attached to the church and hence the finding of the court below that the custom of endogamy is in violation of Article 21 of the Constitution of India is not sustainable in law. After entering



into such a finding, the first appellate court further found that Knanaya Catholic community attached to the church is a separate section of Christian religion under Article 26 of the Constitution of India, but it does not have any primacy to prescribe religious sacraments over and above the canon law as it does not have any independent control and existence apart from its supreme ruler or sovereign authority of Christian religion, Pontiff.

13. Thereafter, first appellate court, after detailed discussion entered into a finding that the practice of endogamy for the membership of the church is in violation of the religious rights of the plaintiffs 2 and 3 and the persons having similar interest, guaranteed under Article 25 of the Constitution of India and as such, the court is entitled to direct the church by way of injunction to perform the sacrament of marriage and baptism according to Canon laws and also mandatory injunction to re-admit those who were driven out, on account of the membership criteria, "endogamy" stipulated in Ext.B1 by-law of the church and as the above claims and reliefs are of a civil nature.

14. But, in the previous paragraph, first appellate court

has also entered into a finding that endogamy practiced in the community is lawful and is protected under Article 13 of the Constitution. After entering into such a finding, whether the first appellate court is justified prima facie in granting the reliefs as sought for on the ground that endogamy is in violation of religious rights of the plaintiffs 2 and 3 guaranteed under Article 25 of the Constitution of India is yet another point which came up for consideration in the second appeal. Learned counsel for the defendants also would contend that there should be a balance between Articles 25 and 26. Article 26 guarantees every religious denomination or any Section thereof to establish and maintain institution for religious and charitable purposes, to manage its own affairs in matters of religion etc. It has been found by the first appellate court that Knanaya community is a religious denomination. It has been vehemently contended by defendants 1 and 2 as well as supporting defendants that Knanaya community has not been made a party so as to protect the interest of the community and the suit is bad for non-joinder on that account. Under Article 26, religious domination has got right

to manage its own affairs in matters of religion and when it has been found that the endogamy practiced in the community is lawful whether the court is justified in restraining defendants 1 to 3 from terminating membership of any member of the Archeparchy of Kottayam for marrying a Catholic from any other Diocese and provide equal rights and facilities through parish priests for the sacrament of marriage to those members of Archeparchy of Kottayam who wishes to marry Catholics from any other Diocese are yet another issue. It is also contended by the counsel for defendants 1 and 2 that mandatory injunction granted by the courts below to readmit members along with their spouses and children whose membership were terminated will result in raising claim by families who left Archeparchy of Kottayam over last several centuries, across generations which would lead to an anomalous situation.

15. Learned counsel for the third respondent finally requested for maintaining relief No.2 of the trial court judgment which was upheld by the appellate court by which defendant Nos.1 to 3 are restrained by a permanent injunction from

terminating the membership of any member of Archeparchy of Kottayam for marrying a Catholic from any other diocese as an interim measure till the final disposal. Learned counsel for the defendants/appellants, on the other hand, pressed for maintaining the interim relief granted by this Court on 04.11.2022 until final disposal since various substantial questions of law of great importance are coming up for determination in the second appeal. In view of the substantial questions of law formulated by this Court in the second appeal, a detailed hearing would be necessary to resolve various issues finally.

Hence I am of the considered view that till the final disposal of the appeal, the interim arrangement made on 04.11.2022 which has been extracted towards the end of paragraph 10 of this order, will be continued. Petition is disposed of accordingly.

(sd/-) **M.R.ANITHA, JUDGE**

jsr