

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Tuesday, the 7th day of September 2021 / 16th Bhadra, 1943

OP(C) NO. 1451 OF 2021

O.S. NO.106/2015 OF THE ADDL. SUB COURT, KOTTAYAM

I.A.NO.3/2021 IN A.S.NO. 36/2021. ADDL DISTRICT COURT V KOTTAYAM

PETITIONER/PLAINTIFFS:

1. KNANAYA CATHOLIC NAVEEKARANA SAMITHY, VAITHARA BUILDING, (NEAR VILLAGE OFFICE) KUMARAKOM P.O, KOTTAYAM -686563 REPRESENTED BY ITS PRESIDENT.
2. T.O JOSEPH, AGED 70 YEARS, S/O. OUSEPH, THOTTUMKALHOUSE, KANNANKARA P.O, THANNERMUKKAM NORTH VILLAGE, CHERTHALA TALUK, ALAPPUZHA DISTRICT.
3. C.K. PUNNEN, AGED 68 YEARS, S/O. KURUVILLA, CHIRAYIL HOUSE, ATHIRAMPUZHA P.O, KOTTAYAM TALUK, KOTTAYAM DISTRICT, REPRESENTED BY HIS POWER OF ATTORNEY HOLDER.V.C, MATHAI.

RESPONDENTS/DEFENDANTS:

1. THE METROPOLITAN ARCHBISHOP, THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITANS HOUSE, KOTTAYAM, KERALA - 686001, THE PRESENT METROPOLITAN ARCHBISHOP IS MOST REV. MAR MATHEW MOOLAKKATT.
2. THE ARCHEPARCHY OF KOTTAYAM, CATHOLIC METROPOLITANS HOUSE, P.B. NO. 71, KOTTAYAM, KERALA - 686001, REPRESENTED BY THE METROPOLITAN ARCHBISHOP.
3. THE MAJOR ARCHBISHOP, SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH, MOUNT. ST.THOMAS, KAKKANAD P.O, P.B.NO. 3110, KOCHI - 682030, THE PRESENT MAJOR ARCHBISHOP IS HIS BEATITUDE MAR GEORGE CARDINAL ALENCHERY.
4. SYNOD OF THE BISHOP OF THE SYRO MALABAR MAJOR ARCHIEPISCOPAL CHURCH, MOUNT ST. THOMAS, KAKKANAD P.O, P.B. NO. 3110, KOCHI - 682030, REPRESENTED BY ITS SECRETARY.
5. CONGREGATION FOR THE ORIENTAL CHURCHES VIA DELLA CONCILIAZIONE, 34, 00193 ROMA ITALY, REPRESENTED BY ITS PREFECT.
6. CONGREGATION FOR THE DOCTRINE OF FAITH PIAZZA DEL.S UFFICIO-II, 00139, ROMA ITALY, REPRESENTED BY ITS PREFECT.
7. KNANAYA CATHOLIC CONGRESS, KOTTAYAM, REPRESENTED BY ITS PRESIDENT STEPHEN GEORGE, S/O. GEORGE, VELIYATH(H), KURUMULLOOR P.O, ONAMTHURUTHU VILLAGE, KOTTAYAM -686632,
8. LUKOSE MATHEW K., AGED 65 YEARS, S/O. MATHEW, KUNNUPURATHU (H)., KURICHITHANAM P.O, KURICHITHANAM VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.

Op (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the OP(C) the High Court be pleased to pass an order of staying Ext.P2 until this original petition (civil) is heard

and finally disposed of.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of OP(C) and upon hearing the arguments of M/S.KALEESWARAM RAJ, VARUN C.VIJAY, THULASI K. RAJ & MAITREYI SACHIDANANDA HEGDE, Advocates for the petitioners, the court passed the following:

(P.T.O)



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V.G.ARUN, J.**O.P(C).No. 1451 of 2021****Dated this the 7th day of September, 2021****O R D E R**

Admit.

2. Issue notice to the respondents through speed post.

3. The petitioners had filed the suit (O.S.No.106 of 2015 before the Additional Sub Court, Kottayam) seeking the reliefs of prohibitory and mandatory injunction, restraining respondents 1 and 2 from expelling members of the Archeparchy of Kottayam, on marrying a person from outside the Diocese. The petitioners challenged the act of termination as unholy, unlawful, illegal, inequitable, unconstitutional, unethical and inhuman. By Exhibit P1 judgment dated 30-04-2021, the trial court, after detailed consideration of the issues, decreed the suit as under;

“1. It is hereby declared that by entering into the sacrament of marriage with another Catholic from any other Diocese, a member of Archeparchy of Kottayam will not forfeit his/her membership in defendant No.2, the Archeparchy of Kottayam.

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2. Defendants No.1 to 3 are hereby restrained by a decree of permanent prohibitory injunction from terminating the membership of any member of the Archeparchy of Kottayam for marrying a Catholic from any other Diocese.

3. Defendants 1 to 3 are hereby directed by way of decree of mandatory injunction to provide equal rights and facilities through the parish priests for the sacrament of marriage to those members of Archeparchy of Kottayam who wishes to marry Catholics from any other Diocese.

4. Defendants No.1 and 2 are hereby directed by way of decree of mandatory injunction to readmit members along with their spouses and children whose membership were terminated by defendants 1 and 2 for marrying Catholic if the former members are qualified in all other respects on receipt of proper application.

5. Considering nature of litigations, I am of considered opinion that there is no order as to costs."

Aggrieved, defendants 1 and 2 filed appeal and sought an interim stay of the judgment and decree. By order dated 18.5.2021, the Appellate Court stayed the operation and execution of the judgment and decree till 19.6.2021 and posted

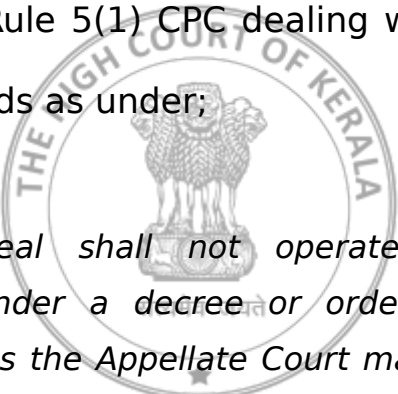
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the appeal to 19.6.2021 for objection and hearing. Thereafter, by order dated 19.7.2021, the interim order of stay was extended till the disposal of the appeal. This original petition is filed aggrieved by the interim order by which the execution of the judgment and decree is stayed.

4. Heard Sri.Kaleeswaram Raj, learned Counsel for the petitioners.

5. Order XLI Rule 5(1) CPC dealing with the powers of the Appellate Court reads as under;



“An appeal shall not operate as a stay of proceedings under a decree or order appealed from, except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.”

6. A plain reading of the provision leaves no room for doubt that stay of proceedings or execution of the decree shall be granted only on the Appellate Court being convinced of there being sufficient cause for granting the order. The order should

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therefore reflect the sufficient cause/reason that had prompted the Appellate Court to stay the proceedings or the execution. As held by the Apex Court In **Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.** [(2005) 1 SCC 705], the only guiding factor indicated in Order XLI Rule 5 is the existence of sufficient cause in favour of the appellant on the availability of which the Appellate Court would be inclined to pass an order of stay.

7. As far as the instant case is concerned, absolutely nothing is stated in the order dated 18.5.2021 by which operation and execution of the order is stayed. It is stated that the order was rendered after perusing the judgment of the trial court and the affidavit in support of the stay petition. Even though the subsequent order, by which the stay is extended, was issued after hearing, that will not efface the fundamental flaw of the stay order having been granted without the court exercising its discretion judiciously.

8. The issue involved is regarding curtailment of the fundamental right of a citizen to marry a person of his/her choice, by insisting that the partner should also be a member of the Archeparchy of Kottayam. According to defendants, the practice

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of endogamy is part of its religious tenets and therefore, protected under Articles 26 (b) and 29(1) of the Constitution of India. In this context, it may be relevant to extract the following paragraph in ***Shafin Jahan v. Asokan K.M.*** [(2018) 16 SCC 368];

"52. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realisation of a right is more important than the conferment of the right. Such actualisation indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith

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and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition."

9. In my considered opinion, there should be sufficient cause for the court to stay the decree of the trial court, thereby suspending an individual's right to marry a partner of his choice. For now the issue stands decided in favour of the petitioners. Being so, the Appellate Court should not have stayed the operation and execution of the decree, that too without assigning valid reasons.

For the reasons aforementioned, operation of the interim order of stay in A.S. No.36 of 2021 of the Additional District Court- V, Kottayam is kept in abeyance for one month.

Post immediately after service of notice.

Sd/-

V.G.ARUN, JUDGE

vgs

Exhibit P2

TRUE COPY OF THE ORDER DATED 19.07.2021 IN
I.A.NO.3/2021 IN A.S.NO. 36/2021.

Exhibit P1

TRUE COPY OF THE JUDGMENT DATED 30TH APRIL 2021 IN
O.S.NO.106/2015

