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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 915/2016

ST THOMAS MAR THOMA SYRIAN CHURCH
AND ANR

..... Petitioners

Through Mr.A.S.Chandhiok, Sr. Advocate
with Ms.Sweta Kakkad and
Ms.Arveena Sharma, Advocates.

versus

ALEXANDER PHILIP & ORS

..... Respondents

Through Mr.Rakesh Tikku, Sr. Advocate with
Mr.M.P.Sinha, Mr.Ishaan George,
Ms.Mumtaz & Mr.Sumit Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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15.09.2016

1. By the present petition, the petitioner has impugned the order dated 09.09.2015 by which an ex-parte injunction order was passed by the trial court.
2. The suit has been filed by respondent No.1 seeking the following relief:

“i) Pass a decree of declaration declaring the order of excommunication of the Plaintiff vide letter dated 22.06.2016 by defendant No.6 to be null and void and non-est and further declare that the plaintiff continues to be member of defendant No.1 whose name shall be borne in the Edavaka (Parish) Register.

ii) Pass a decree of mandatory injunction against the excommunication order dated 22.06.2016 by defendant No.6 thereby allowing the plaintiff to participate and represent defendant No.1/Church as their “Mandalam Representative” to defendant No.5 which is scheduled for 15th to 17th September, 2016.

iii) Declare that the plaintiff had never been excommunicated and had uninterruptedly enjoyed the rights and privileges in the Mar Thoma Church defendant No.5.

iv) Pass an injunction order against defendants No.2, 4 and 6 from issuing letters, orders, kalpanas with overtones of communal hatred especially in relation to inter-religion marriages solemnized between members of defendant No.5 and members of other religious faiths under Special Marriage Act.”

3. The bone of contention between the parties is a communication dated 22.06.2016 written by respondent No.5 to respondent No.1, which reads as follows:

“Dear Mr.Alexander Philip,

I have written to you on 27.04.2016 regarding an issue that you have blessed a marriage on 2014 May 26th. I was expecting a response from you till today. You have failed to make the response. Therefore, you are punishable in breaking the Constitutional provisions of the Church. You have broken the discipline of the Church in blessing the marriage of a Mar Thoma girl with a boy from Uttarakhand, who is not a member of Christian Church. In the light of above facts, your membership in the Mar Thoma Church is terminated and I have given direction to Karolbagh vicar to remove your name from the parish register. You have forfeited your rights and privileges in the Mar Thoma Church by your action to which you have no authority to perform.

Your Sincerely,

DR.JOSEPH MAR THOMA METROPOLITAN”

4. The trial court on 09.09.2015 passed the following order:

“Let in these circumstances, defendants are hereby directed not to restrain the plaintiff in participating in Mar Thoma Sabha Mandalam Meeting scheduled for 15th to 17th September, 2016 at Malankara Mar Thoma Syrian Church, Thiruvalla, Kerala till next date of hearing. This interim measure is provisional and subject to outcome of the suit and defendants are at liberty to put forward their case on the date of hearing.”

5. When this matter came up for hearing before this court on 14.09.2016, this court modified the above order as follows:

“Sh.Rakesh Tikku, the learned senior counsel for the respondent submits that if his client goes to attend Mar Thoma Sabha Mandalam Meeting scheduled for 15th to 17th September, 2016 at Malankara Mar Thoma Syrian Church, Thiruvalla, Kerala, he will not create any disturbance and will also not vote on any issue in the same.”

6. I may point that the impugned order dated 09.09.2016 has been passed without recording a satisfaction as to whether the plaintiff/respondent No.1 has been able to make out a prima facie case. The entire basis appears to be that the suit will get frustrated on account of ensuing holidays in case an ex-parte injunction is not passed. This approach is not as per Order 39 Rule 1 and 2 CPC.

7. However, in view of the fact that the application for stay is pending before the trial court, it is appropriate that the trial court may hear the application and dispose of the same. This is so as in the facts of this case, it is not appropriate for this court to go into a detailed examination of the

pleadings/facts. The trial court may dispose off the injunction application within a period of one month from today. The impugned order dated 09.09.2016 as modified by this court vide order dated 14.09.2016 shall continue till disposal of the injunction application.

8. The present petition stands disposed of.

JAYANT NATH, J.

SEPTEMBER 15, 2016/v