

**IN THE COURT OF THE SUB JUDGE, CHERTHALA**  
Present:-Ms. Lakshmy.S., Sub Judge  
Saturday, 24<sup>th</sup> day of August 2024/2<sup>nd</sup> Badhra 1946

**CMA. 15/2024**  
(Filed on 22.05.2024)

**Appellants/Respondents 3 & 4 :-**

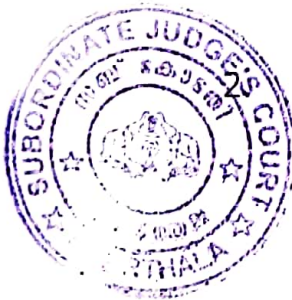
1. St. Thomas Church, Nedumbrakkad,  
Cherthala East Muri, Kokkamangalam Village,  
Cherthala Taluk, Alappuzha District, Rep. by its  
Kaikkaran Joseph.K.J, aged 58 years, S/o. Joseph,  
Koikkara House, Nedumbrakkad CMC-5,  
Cherthala, Alappuzha - 688 524.
2. Rev. Fr. Joy Plackal, aged 53 years, S/o. P.P. Thomas,  
Vicar, St. Thomas Church, Nedumbrakkad,  
Cherthala East Muri, Kokkamangalam Village,  
Cherthala Taluk, Alappuzha District.

***By Adv. N.A. Shafeek***

**Respondents/ Petitioners:-**

1. Roy Abraham, aged 54 years, S/o. J. Abraham,  
Elangickal CMC -7, Cherthala East Muri,  
Kokkamangalam Village, Cherthala.P.O, Alappuzha.

Jettin.K.J, aged 45 years, S/o. K.J. Joseph, Kaimaparambil ,  
CMC-7, Cherthala East Muri, Kokkamangalam  
Village, Cherthala.P.O, Alappuzha District.



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3. Syro- Malabar Major Archi Episcopal Church,  
Rep. By its Major Arch Bishop,  
St. Thomas Mount P.B. No. 3110, Thrikkakara Village,  
Kanayannur Taluk, Kakkanad.P.O, Kochi.
4. The Ernakulam- Angamali Arch Dioceses,  
Rep. By its Apostolic Administrator,  
Arch Bishop's House, P.O.Box No. 2580,  
Ernakulam Village, Kanayannur Taluk, Ernakulam.
5. Joji Varghese, aged 45 years, S/o. Varghese,  
Kallupurackal Hous, Cherthala .P.O, Cherthala East Muri,  
Kokkamangalam Village, Cherthala Taluk,  
Alappuzha District.



**R1 & R2 By Adv. Thomas Joseph,  
R3 By Adv. Mathew Alexander  
R4 By Adv. Jeswin.P. Varghese  
R5 By Adv. Thomas.J. Pannat.**

*This C.M.A preferred against order in IA 1/2024 in OS 150/2024 dated 11.04.2024 on the file of Additional Munsiff Court Cherthala which having been finally heard on 17.08.2024 and the Court on 24.08.2024 passed the following:-*

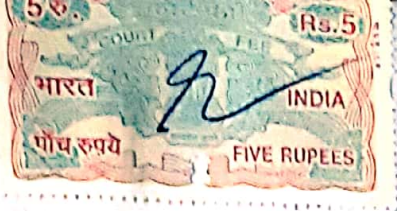


### **JUDGMENT**

This Civil Miscellaneous Appeal arise from the Order dated 11.04.2024 in I.A.01/24 in O.S.No.150/24 of the Additional Munsiff's Court, Cherthala whereby the appellants herein were restrained by an order of temporary injunction from celebrating the Holy Qurbana in variance to the mandate of

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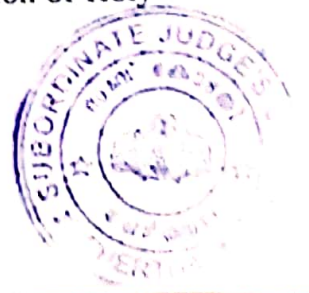




Ext.A1, till the disposal of the suit.

2. The contentions in **I.A.01/24** in **O.S.150/24** are briefly stated as follows:

The petitioners are parish members of 3<sup>rd</sup> respondent Church. The first respondent is a Sui Juris Church, an autonomous church, in full communion with Holy Pope, having self-governance which follows the Code of Cannons of Oriental Churches (CCEO, for short). The head of the whole Catholic Church is the Holy Pope. The second respondent is one among the five Metropolitan Archeparchies. Holy Qurbana is the prime liturgy of the Church. The Synod of the Bishops of 1<sup>st</sup> respondent Church along with the Major Archbishop is the supreme authority to determine the liturgy to be followed for the celebration of Holy Qurbana. Whiles, the 1<sup>st</sup> Session of XXVIII Synod in 2020 formulated a definitive Thaksa, which is the text of Holy Qurbana in its most solemn, solemn and ordinary forms. The Thaksa was approved by the Congregation of Oriental Churches as well as His Holiness of the Pope. The Thaksa approved by Syro Malabar Archi Episcopal Church was published by the Secretariate, Commission for liturgy of the Major Archiepiscopal Curia. Each Sui Juris Churches have a common and independent form of liturgy, a common theology and its own independent administration. It was the long-term wish of the members of the 1<sup>st</sup> respondent church to have a uniform mode of celebration of Holy Qurbana. All the respondents and the members of the 1<sup>st</sup> respondent Church are bound to follow the Liturgy as prescribed by the Synod of the Church. Moreover, His Holiness the Pope has called for the prompt implementation of the uniform mode of the celebrating Holy Qurbana by his letter dated 03.07.2021. Thus, Major Archbishop of the 1<sup>st</sup> respondent by the decree bearing No.775/2021 ordered the definitive Thaksa, to be used for the celebration of Holy Qurbana with effect from 28.11.2021 and further decreed that any other text in Malayalam hitherto in the use for the celebration of Holy Qurbana stands abrogated with effect from that day.



But the 4<sup>th</sup> respondent who is the Vicar of the 3<sup>rd</sup> respondent Church failed to follow the direction or decree passed by the Major Archbishop as well as the direction in Thaksa. The second respondent also had issued circular No.7/2022 calling for complete adherence to the implementation of Thaksa. But, even after the call from His Holiness the Pope, Congregation of Oriental Churches and the Major Archbishop of 1<sup>st</sup> respondent, the 4<sup>th</sup> respondent has willfully refused to celebrate the Holy Qurbana as per the liturgical prescriptions. The petitioners being lay faithful are entitled to practice the religion of their choice under Constitution of India and Canon Law. The Synod of the 1<sup>st</sup> counter petitioner church is the supreme authority decide the form of liturgy, with the approval of Holy See and Congregation for Eastern Churches. The Holy Pope has deputed Arch Bishop Cyril Vasil as its apostolic delegate of the Syro-Malabar Major Arche Episcopal Church to implement the uniform mode of offering Holy Qurbana as approved by the Church. The Holy Pope has even addressed the members of the second respondent church as an extraordinary measure, through video conference on 07.12.2023 calling upon all clergy and believers to adhere to the mandate of the Synod. But, the fourth respondent who is reluctant to follow the mandate has misused the sacred Altar for campaigning against the Synod and Superiors of Syro-Malabar Church including its Major Archbishop and even against the head of the Universal Church, Holy Pope Francis. The fourth respondent is bound to obey the direction and orders of the head, the Major Archbishop, and the petitioners have got a strong prima facie case in the subject matter.

Therefore, the application for interim injunction to restrain the 4<sup>th</sup> respondent and any persons officiating the post of Vicar of 3<sup>rd</sup> respondent from celebrating the Holy Qurbana against suit document No.1.

3. The first respondent through the Major Archbishop, filed counter affidavit raising the following contentions:

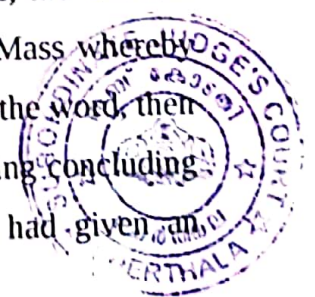
The Catholic Church is a communion of Churches, governed by Canon

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Law and guided by the Holy Pope, who is the Ecclesiastical authority. The Syro- Malabar Church is a Sui Juris Church which has over 5million members, 35 Dioceses with 2790 parish, 65 Bishops and 10,286 priests. The Syro Malabar ecclesiastical hierarchy was officially declared by the Holy See in the year 1923. Later in the year 1992, the hierarchical status of Syro Malabar Church was elevated to the status of Major Archiepiscopal Church. The ecclesiastical authority of Syro Malabar Catholic Church is vested in the Synod of Bishops and the Major Arch Bishop. The Holy Mass is the greatest and sacred prayer as it commemorates the Last Supper. The Code of Eastern Canon Law stipulates clear laws regarding worship and the mode of worship is strictly according to the liturgical books. Approval and implementation of liturgy is a religious matter and is related to faith and worship of the members of the Church. As per Canon 657 of CCEO, the Major Archbishop is the authority for the approval of liturgical text with the consent of the Synod of Bishops.

The Synod of Bishops introduced the practice of the celebrant facing the people during the pre-anaphora and post communion prayers and celebrant facing Altar during the anaphora after various level discussions. The Holy Mass is not celebrated on the basis of customs but on the basis of the directives and texts of the Sui Juris church. The Synod of Bishops has approved the new text on liturgy and issued directions for celebrating the liturgy. All bishops and priests are bound to accept and follow the text approved by the Synod of Bishops and decreed by Major Archbishop. This decision of the Synod was implemented in some Dioceses, while some Dioceses including Ernakulam-Angamaly, it was not implemented. Thereafter, in the year 2021, the Oriental Congregation reconfirmed the practice of celebration of Holy Mass whereby the celebrant shall face the faithful at bema during the liturgy of the word, then turn towards the altar, in the same direction that the faithful during concluding rights after Holy Communion. Holy father of Pope Francis had given an



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exhortation on 03.07.2021 for the implementation of the decision taken by the Synod in the year 1999. Thereafter, Synod of Bishops took a unanimous decision and head of the Syro Malabar Church issued a decree for the implementation of the revised text and uniform mode of celebration Holy Qurbana.

The opposition to the implementation of the uniform mode of celebration of Holy Mass at the instance of a minority would not invalidate the decision of the Synod of Bishops, the Congregation of Oriental Churches and the Holy father Pope Francis. The liturgy cannot be celebrated according to the whims and fancies of certain individuals. All celebrations contrary to the direction in decree dated 27.08.2021 are illegal and against the canon law and hence against the discipline of the church. After the last session of Synod of Bishops in January 2024, all the bishops have unanimously signed and sent a circular asking the priests of Ernakulam – Angamaly to follow the Synodal mode of celebration, which was forwarded by the Apostolic administrator with his endorsement for implementation. On 07.12.2023, the Holy Father in an extraordinary way issued video message to the priests and faithful of Archieparchy of Ernakulam – Angamaly asking them to obey and celebrate the Holy Qurbana in accordance with the direction of the Synod. A Catholic Diocese can only be considered as a voluntary organization and no individual/priest has any right to deviate from the Qurbana Thaksa and mode of its celebration on basis of a false claim of custom. The respondents 4 and 5 being the Vicar and parish member under the 1<sup>st</sup> respondent church is bound to adhere to the mandate of the Synod and to celebrate the uniform mode Holy Qurbana. Hence, the application is only to be allowed.

4. The second respondent has filed counter affidavit reiterating the averments in the counter affidavit of the first respondent and almost in the same line. Hence the averments are not reproduced to avoid repetition.

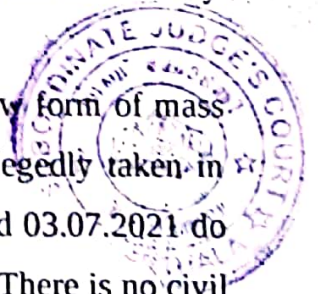
5. The respondents No.3 to 5 vehemently opposed the interim



application and filed counter affidavit as well as objections. In order to avoid repetition, their contentions are summarized as follows:

The Canon Law is not recognized in India. An Ecclesiastical Court is formed to resolve the dispute alleged in the plaint and injunction petition. The right claimed by the petitioner is purely religious and not a civil right and hence cannot be enforced through a Civil Court. The application with a mandatory prayer requires strong prima facie case. The interim prayer sought for is equal to the final relief and it would amount to passing a decree without taking evidence. There are about 1150 parishioners in the Church and hence publication under O.I R.8 CPC is necessary. The petitioners right under Article 25 of the Constitution India is an undisputed matter. Likewise, other faithful also have the same right to freedom of religion. Thaksa is the approved text of Holy Qurbana, which is the prime liturgy of the church. The liturgy has two parts, which are worship and Rubrics. The essential parts of the Liturgy are worship and rubrics are only complementary for worship. Whether the suit document No.1 Thaksa has obtained proper approval of the Congregation of Oriental Churches and the Holy Pope is to be proved by the petitioners. The direction No.7 stated in the affidavit is not with respect to the worship but it is only rubrics. The prime intention of the Holy Qurbana is worship and not rubrics. In Ernakulam – Angamali Archdiocese, the Holy Qurbana is celebrated for the last 60 years facing the people. 99% of the people in Ernakulam – Angamaly Archdiocese celebrated the Holy Mass facing the people. A vast majority of the priests and laity wish to continue the celebration of Holy Qurbana facing the people.

The present dispute regarding the implementation of new form of mass is only because of the reason that so called decision was allegedly taken in violation of the procedures. The exhortation of Holy See dated 03.07.2021 do not say anything about the mode of Qurbana to be celebrated. There is no civil remedy against the violation of canon law. There cannot be a dissident priest in



the world and all priests are sharing the love of Jesus Christ to the world. There was no attempt to attack Archbishop Cyril Vasil. The respondent has never misused the sacred altar for any campaign against the authority of the Church. The parishioners do not want to disturb the peaceful situation of the parish. The dispute is with respect to the liturgy, unconnected with any property management and administration of the Church. Hence, the court has no jurisdiction to try the suit under Sec.9 of Code of Civil Procedure. The performance of holy mass in present form is having rich historical background and the same is recognized and approved in Universal Catholic Council held during 1962-1965 wherein 2468 bishops were participated. Rubrics No.7 is not an important or essential part in the celebration of Holy Qurbana. The same does not involve faith. Therefore direction No.7 is only a suggestion and have no binding force. The performance of Holy Qurbana facing the people has historic background and is based on deep rooted faith. As per Canon 1503 (3), if it has been legitimately observed for 30 continuous and complete years, it has the force of law and that the custom of the Christian Community can obtain force of law under Canon No.1506. If injunction is granted irreparable injury and hardship would be occasioned to the parishioners and no injury would be caused to the petitioners herein. Hence, the application is only liable to be dismissed.

6. For the purpose of I.A., Exts.A1 to A9 were marked from the side of petitioners and Exts.B1 to B14 from the side of respondents. Commission Report and CD were marked as Exts.C1 and C1(a).

7. The trial court after considering the points regarding prima facie case, balance of convenience and irreparable injury, allowed I.A.01/24. The said Order is under challenge in this C.M.A. The appellants produced additional documents and those were marked as Ext.B15 to B28.

8. Heard both sides and perused trial court records.

9. The following points arise for considerations in these appeals:

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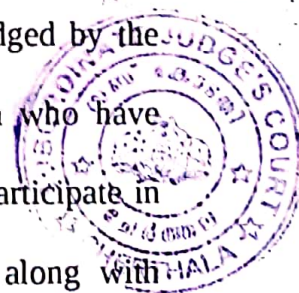


1. Whether the Order dt.11.04.2024 in I.A.01/24 in O.S.150/24 of the learned Munsiff requires interference?
2. Reliefs and costs.

10. **Point No.1:**

The uniform mode of celebration of Holy Qurbana which is the subject matter of this litigation is as follows: **The celebrant shall face the faithful at the Bema during the Liturgy of the Word, turn towards the Altar in the same direction that the faithful are facing for the liturgy of the Eucharist, and once again face the faithful during the concluding rites after the Holy Communion.**

11. The Holy Qurbana is a complete worship and a solemn reminder of God's sacrifice of his son Jesus Christ as well as participation in the Body and Blood of Jesus Christ based on the words of Jesus during the Last Supper shared with his apostles before crucifixion. But Ext.A1 Thaksa formulated in the first Session of XXVIII Synod in 2020, which prescribes a uniform mode of celebration of the Holy Qurbana has created the unfortunate turbulence among the priests, clergy, believers and lay faithful on such a sacramental liturgy of Syro Malabar Church. The Church has witnessed many protests for and against the implementation of the Thaksa which have also resulted in litigations before various civil courts. The present suit is one lodged by the parish members of St.Thomas Church, Nedumbrakad, Cherthala who have approached the Court for a declaration that they are entitled to participate in the Holy Qurbana strictly in accordance with Ext.A1 Thaksa along with



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prayers for mandatory as well as perpetual injunction which are consequential in nature.

12. The order of the learned Munsiff granting a temporary injunction in favour of the petitioners are challenged by the appellants herein on the following grounds:

a) The procedure to be followed in finalizing the liturgical text, Raza Qurbana Thaksa, formulated by the Synod of Bishops and approved by his Holiness the Pope was not considered.

b) There is no violation of any civil right and the reliefs sought for relate to performance of rituals and ceremonies which are outside the scope of Sec.9 of the Code of Civil Procedure.

c) As per the Canon Law, there exists equal and efficacious remedy to redress grievance before the Church Authorities and the suit itself is hit by Sec.41 of Specific Relief Act.

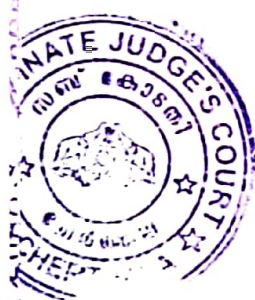
d) There were procedural lapses in the Synod for incorporating direction No.7 (Rubrical instruction) in the Raza Qurbana Thaksa.

e) Direction No.7 sought to be implemented was illegally included in the Raza Qurbana Thaksa approved by the Holy See.

f) Article 25 of the Constitution of India guarantees everybody to profess the religion freely and performance of a particular ritual is no way connected with the practising, professing, propagandizing of any religion of their choice.

g) The Synod has decided to implement the new form of holy mass in a gradual manner and not in a single step as alleged by the plaintiffs.

h) The allegation that the decision to implement new form of holy mass is taken unanimously is not at all correct. By going through the discussion held in the synod (29<sup>th</sup> Synod, 2021), it can be seen that the reservations raised against the implementation of new form of holy mass by the members of synod



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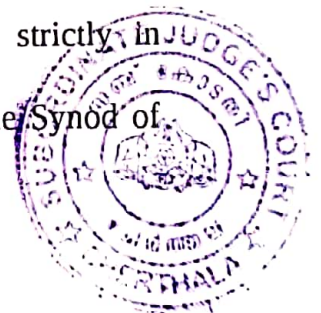


(page 39 to 100 Synodal News, 29<sup>th</sup> Synod 2021).

i) The changes allegedly made in the Thaksa is under challenge as the recognition is obtained in a manipulated way. The appellants, Priest and laity is challenging the very validity of the recognition allegedly received by the synod.

13. Before discussing about the maintainability of the suit and the three golden rules for granting an interim injunction regarding the implementation of Ext.A1 Thaksa on uniform mode for celebration of Holy Qurbana, it is relevant to mention the ecclesiastical hierarchy of Syro Malabar Church and the liturgy followed in religious worship. The undisputed version of the first respondent who is the authority on the subject is as follows: The Syro Malabar Church is a Sui Juris Church and Catholic Church is governed by Canon Law. The ecclesiastical authority in the Catholic Church is vested with the Holy Pope. The Syro Malabar Church has 35 Dioceses with 2,790 parishes, 65 Bishops and 10,286 priests. The Syro Malabar Ecclesiastical hierarchy was officially declared by the Holy See in the year 1923 and thus Ernakulam Vicariate was elevated as Arch Diocese. Later, in the year 1992, the hierarchical status of Syro Malabar Church was elevated to the status of Major Archiepiscopal Church. The Ecclesiastical authority in the Syro Malabar Catholic Church is vested in the Synod of Bishops and the Major Archbishop.

14. The Holy Mass is the greatest and sacred prayer. There are clear laws regarding the worship and mode of worship should be strictly in accordance with the liturgical books. The CCEO provides that the Synod of



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Bishops is exclusively competent to make laws for the entire patriarchal Church. Canon 657.1 states regarding the approval of the liturgical texts after the prior review of the Apostolic See, reserved in the Major Archiepiscopal Church to the Major Archbishop with the consent of Synod of Bishops.

15. The first important ground raised by the appellants is that the subject matter of the suit is on the rites and religious ceremonies of Syro Malabar Church and hence it is outside the scope of S.9 CPC as there is no violation of any civil right. The learned counsel for the appellants placed reliance on the decision of the Hon'ble Apex Court in **Sinna Ramanuja Jeer V. Ranga Ramanuja Jeer; AIR 1961 SC 1720** in support of his argument. In the said decision, it was held that a suit for declaration of religious honour and the privilege simpliciter will not lie in a Civil Court, but a suit to establish right to an office in a temple and to honour and privilege attached to the said office as its remuneration or perquisites is maintainable in a civil court.

16. The decisions in **Major Archbishop, Angamaly and others v. PA Lalan Tharakan; 2016 (2) KLT 791** and **Xavier Chullikal and others v. C.V.Raphel and others 2017(2) KLT 1072** were also relied on by the learned counsel for the appellants to fortify his argument that nobody can enforce a religious practice as it is a civil right. The above decisions have laid down the law that dispute with respect to rituals or ceremonies alone cannot be adjudicated by civil courts if they are not essentially connected with civil rights of an individual.



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17. The petitioners have approached the trial Court highlighting their right to participate in the Holy Mass in accordance with the modified Thaksa which was formulated by the Synod in the year 2021. According to the petitioners, the Thaksa was approved by the Synod of the Bishops of Syro Malabar Major Archiepiscopal Church and the Holy Pope have called for the implementation of the uniform mode of celebrating Holy Qurbana. The petitioners have alleged that the appellants herein who are obliged to follow the same are reluctant to follow the mandate.

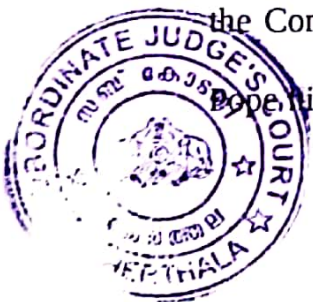
18. The learned Munsiff after appreciating the nature of grievance advanced by the petitioners, came to a conclusion that the Court was not required to interpret the form of liturgy and the correctness of the same in the modified Thaksa. She has further observed that the petitioners have approached the Court on the allegation that the appellants herein were not following the decree of the authorities. The learned Munsiff has further relied on the landmark decision of the Hon'ble Supreme Court in **PMA Metropolitan v. Moan Mar Marthoma; AIR 1995 SC 2001** to reach a conclusion that the Court has jurisdiction to entertain the suit.

19. In the said decision, the Hon'ble Apex Court has observed as follows: *'Religion is the belief which binds the spiritual nature of men to supernatural being.' It includes worship, belief, faith, devotion etc and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it. It is civil in nature. The dispute about*



*the religious office is a civil dispute as it involves disputes relating to rights which may be religious in nature but are civil in consequence. Any infringement with a right as a member of any religious order is violative of civil wrong. This is the letter and spirit of explanation 1 to Sec.9. (Emphasis supplied)* As rightly observed by the learned Munsiff, the petitioners have not sought for an intervention of the Court on the correctness of the Thaksa or the form of liturgy. The petitioners right as lay faithful to worship in accordance with the approved Thaksa formulated by the Superior Authorities of the Church is sought to be protected against the respondents who are obliged to follow the mandate. The same is not purely an adjudication on the religious rites or ceremonies and there is no error in the finding of the learned Munsiff that the Court has jurisdiction on the matter.

20. Now the question on prima facie case, balance of convenience and irreparable injury are to be considered. The petitioners are aggrieved by the act of appellants in not following Ext.A1 Thaksa for performing Holy Qurbana in their Church. According to the petitioners, the Synod of Bishops along with Major Archbishop who is the supreme authority to determine the liturgies to be followed, has formulated Ext.A1 Thaksa for celebration of Holy Qurbana to provide a uniform mode, in the year 2021. The petitioners have further contended that after approval, Ext.A1 was published by the Secretariate and the Commission of Liturgy of the Major Archi episcopal curia and the Holy Pope himself have called for the implementation of the uniform mode of Holy



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Qurbana. Still, the appellants were not obeying the orders of his superior authorities and thus the petitioners' right to participate in Holy Qurbana as per the liturgy formulated by the authorities got infringed.

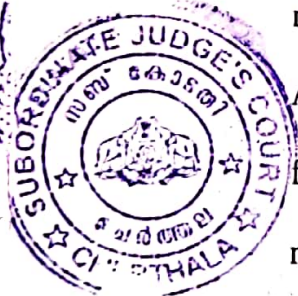
21. The appellants herein who were the respondents No.3 and 4 before the trial court have vehemently opposed the implementation of Ext.A1 Thaksa. According to the appellants, the procedure to be followed in finalizing the liturgical text, Raza Qurbana Thaksa, formulated by the Synod of Bishops and approved by his Holiness the Pope was not followed. There were procedural lapses in the Synod for incorporating direction No.7 (Rubrical instruction) in the Raza Qurbana Thaksa. Direction No.7 sought to be implemented was illegally included in the Raza Qurbana Thaksa approved by the Holy See. The Synod has decided to implement the new form of holy mass in a gradual manner and not in a single step. The decision to implement new form of holy mass was taken unanimously is not correct. By going through the discussion held in the synod (29<sup>th</sup> Synod, 2021), it is clear that the reservations were raised against the implementation of new form of holy mass by the members of Synod (page 39 to 100 Synodal News, 29<sup>th</sup> Synod 2021). The changes allegedly made in the Thaksa is under challenge as the recognition is obtained in a manipulated way.

22. Eventhough the above grounds were not specifically pleaded by the appellants before the trial court, these aspects are also considered to reach a finding on the prima facie case of the petitioners. The appellants have no

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dispute on the Supreme Authority of the Synod of Bishops and the Major Arch Bishop to determine or to formulate the liturgies to be followed in Syro Malabar Church. The authority of the Holy See who guides the Church is also not challenged. Even according to the appellants, the proposal to implement uniform mode of celebrating Holy Qurbana was made in the year 1999 and the same was kept in abeyance for further deliberations. Later in the Synod of the year 2021, the matter was again taken up for consideration and Ext.A1 Thaksa formulated for the uniform mode of Holy Qurbana was decided to be implemented. The main dispute of the appellants herein is that there was no unanimous decision in the Synod and Ext.B19 and B21 Synodal News were highlighted to show that many had expressed their dissent to implement the uniform mode.

23. The next argument advanced by the appellants is that the respondents 1 and 2/petitioners have equal and efficacious remedy available and hence no injunction can be granted as provided u/S.41 of the Specific Relief Act. The argument is that for the violation of any liturgical celebrations of Church or Canon Law, remedy is provided in Can.1055 to 1184 and hence an interim injunction cannot be granted. The learned counsel for the appellants relying on Ext.B15 to B17 documents in OS 825/2021 argued that the Church Authorities themselves have specifically averred that there is no civil remedy for the matters related to worship and that Canon Law is the remedy. In order to reach a conclusion that there is an equal and efficacious remedy available for

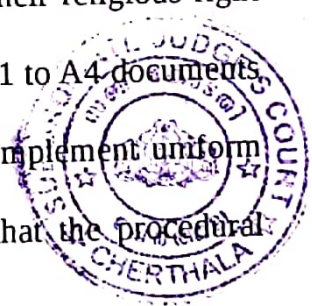


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the parish members to move against the infringement of their right to worship, there should be a finding that a definite forum or authority under Canon Law equal to or above the Civil Court to attend the grievance of the petitioners. However, the appellants have not specifically pleaded as to the forum and procedure under Canon Law which would provide an equal and efficacious remedy for the petitioners debarring the civil remedy of the petitioner.

24. The next argument advanced is with respect to the finding of the trial court on right to profess religion guaranteed under Art.25 of the Constitution of India. The learned counsel for the appellants argued that performance of a particular ritual or ceremony does not come under the Constitutional guarantee to profess, practice or propagate any religion of one's choice. In **His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami v. State of Tamil Nadu; AIR 1972 SC 1586**, the Hon'ble Apex Court has settled the law that protection of Art.25 and Art.26 of the Constitution of India is not limited to matters of doctrine or belief, but also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion. So, there is no error on the finding of the learned Munsiff that petitioners have the right to approach the court to protect their religious right enshrined under Art.25 of the Constitution. However, Ext.A1 to A4 documents would show that the Authorities have issued direction to implement uniform mode of Holy Qurbana. It is also pertinent to mention that the procedural

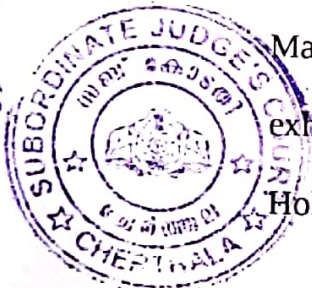


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irregularities, if any in the decision of Synod or the decree of Major Archbishop, as pointed out by the appellants are not fact in issue in this case. As rightly observed by the learned Munsiff, the appellants who are in a better position when compared to the parish members, have not taken any measures to address their dissent on the matter before the appropriate authorities even after the Synod of 2021.

25. The appellants who have repeatedly affirmed their obligation to follow the papal directions and the directions of Major Archbishop are reluctant to obey the decree of the Authority on the ground that the new mode would invite mass protest from the members of parish. However, no such apprehension is seen addressed before the Authorities by any parish member till date. Another argument advanced by the appellant is that the performance of Holy Mass facing the people is being performed for the last sixty years and as per Canon 1507(3), it has the force of law as the custom gets recognition under Canon 1506. The said claim of custom was stoutly denied by the Authorities and there is nothing on record to find that the existing practice cannot be altered by the Synod of Bishops.

26. The appellants have put forward an argument that the Holy Pope was not appraised about the decision to implement uniform mode of Holy Mass by the Church Authorities and hence the Holy See had made an exhortation to the believers. It is quite strange, rather unbelievable, that the Holy Pope would be misled by the authorities to pass such a direction or



*R*



exhortation and would take such an extraordinary step of giving video message for the peaceful implementation of Exl.A I Thaksa.

27. The learned Munsiff has rightly found that the appellants who have accepted the Supremacy of Holy Pope and the authority of Synod of Bishops as well as the Major Archbishop to determine liturgy are duty bound to obey the ecclesiastical hierarchy. There is no doubt that the Holy Pope holds supreme authority in matters of faith, morals and Church administration and his directives are binding on all Catholic Churches. The directive issued in this matter to follow uniform mode of celebration leaves no room for any discretion based on custom or local practice. The reluctance of appellants to obey the directions of the Supreme Authority would definitely make out a prima facie case in favour of the petitioners.

28. The balance of convenience in religious matters would be the seriousness of inconvenience caused when someone is unable to perform religious prayers due to the circumstances arisen. Holy Qurbana is an essential religious worship to a lay faithful and there are no alternatives to the same. The denial of performing the Holy Qurbana as directed by the Supreme Authority would definitely affect the religious faith of a believer. On the other hand, if the right is upheld, no serious impact would be caused to the appellants herein who are under obligation to obey the Holy See. So, the balance of convenience is definitely on the petitioners. If the petitioners who are the lay faithful are denied their right to participate in the Holy Qurbana as per the directions of the

Holy Pope, they would suffer irreparable loss as their religious sentiments connected with the faith on Holy Pope would be affected. To sum up, this Court finds no error in the finding of the trial court which warrant any interference and the point is found against the appellants.

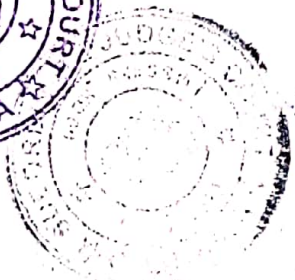
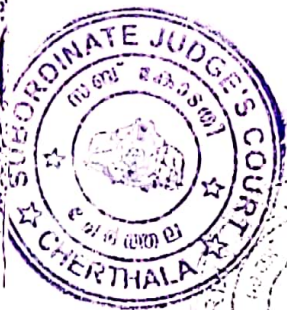
29. When the hearing of the case was on its final lap, the appellants and 4<sup>th</sup> respondent produced certain documents regarding recent development from the Authorities suggesting different modes to solve the issue amicably and to avoid further damage to the religious sentiments of the believers. The Supreme Authority of the Church has every right to resolve the issues and any such attempt would reduce the resistance or dissatisfaction among the members who have deep rooted liturgical practices. As the subsequent events have nothing to do with the disposal of this Appeal, the same is not considered on merits.

30. **Point No.2:-**

In view of the finding on point No.1, the appeal is only to be dismissed. There is no order as to costs considering the circumstances and background of the litigation.

**In the result, CMA is dismissed, without costs.**

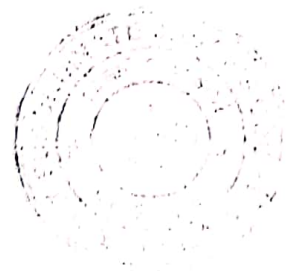
Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 24<sup>th</sup> day of August, 2024.



  
**LAKSHMY.S**  
**SUBJUDGE**

2





**Appendix:-**

**Exhibits from the side of Appellants:-**

- B15 Photo copy of Order in IA No. 1/2021 in OS 825/2021 of Munsiff Court Ernakulam dated 26.11.2021
- B16 Photo Copy of written statement filed by defendant No.2 & 4 in OS 825/21 on the file of Munsiff Court, Ernakulam.
- B17 Photo Copy of counter affidavit filed in IA No.2/20244 in OS 122/24 on the file of Munsiff Court, Ernakulam.
- B18 Photo Copy of extract of Sacrosantum concilium.
- B19 Photo Copy of Relevant extracts from synodal News 29<sup>th</sup> Synod (2021)
- B20 Photo Copy of synodal News -VIII<sup>th</sup> Synod (2000)
- B21 Photo Copy of synodal News -31<sup>st</sup> Synod (2023)
- B22 Extracts of Ernakulam- Angamaly athiroopatha Niyamashamhitha.
- B23 Photo Copy of Letter Issued to Major Arch Bishop by 12 Bishops dated. 24.08.2021.
- B24 Photo Copy of Letter Issued to Major Arch Bishop by 7 Bishops dated. 20.12.2021.
- B25 Confirmation Letter of Election Arch Bishop Bishop Raphel Thattil dated. 10.01.24

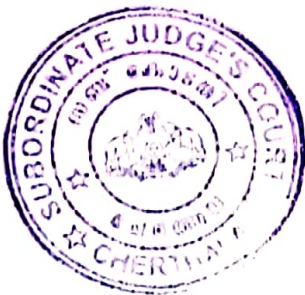


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- B26 Photo Copy of Circular Ref No. 6/2024 dated 01.07.2024
- B27 Photo Copy of Petition dated 08.07.2024 in OS 121/2024 of Munsiff Court, Ernakulam.
- B28 Photo Copy of petition dated 04.07.2024 in OS 451/2024 of Munsiff Court, Ernakulam.

  
**SUB JUDGE**

Typed by : CA  
Compd. by : PS





MEMO OF COSTS

CMA 15/2024

For the Appellants

: Statement not filed.

Court Fee

: ₹. 10.00

Vakalath Fee

: ₹. 5.00

Total

: ₹ 15.00. ( No Order)

For the Respondent

: Statement not filed (No Order)

Drafted on : 03.09.2024

Published on : 03.09.2024

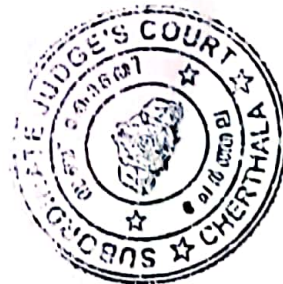
Signed on : 07.09.2024

CI

Shr

Sub Judge.

Note : Documents which are not superseded by this date are to be received back within 3 years from the date of decree and if not, they will be destroyed as per rules.



//True copy//

By order

Examinor



A 589/24

23-3450

Copy of Judgment

**SUB COURT, CHERTHALA**

Year and No. of the suit... CMA 15/2024

Name of the applicant... Adv. Thomas Joseph

No. and date of the application... A 589/24 27.08.24

Date of calling for stamp papers... 07.09.24

Date of production of papers... 07.09.24

Date of calling for exhibit papers... 7

Date of production of papers... 7

Date of copy to... 07.09.24

Date when copy was delivered... 11.09.24

Date when copy was delivered... 07.09.24

Examiner/Fair Copy Superintendent

