

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1705/2021

Kamran Ali.

Vs.

Bio-Labs Private Limited through its Chief Executive Officer & another.

PETITIONER BY: Mr. Javed Saleem Shorish and
Mr. Hassan Javed, Advocates.

RESPONDENT BY: Malik Ghulam Mustafa Kandwal,
Advocate.

DATE OF DECISION: 16.06.2022.

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BABAR SATTAR, J.- Through this judgment this Court will decide (i) Writ Petition No.1705 of 2021 through which order passed by the learned Additional District Judge (East), Islamabad, dated 22.01.2021, was impugned, and (ii) Writ Petition No.1706 of 2021 through which order passed by the learned Additional District Judge (East), Islamabad, dated 22.01.2021, was impugned. Through these impugned orders the learned Additional District Court has dismissed the applications filed by the petitioner to set-aside ex-parte proceedings in a defamation matters.

2. The learned counsel for the petitioner submitted that notices have not been served in accordance with provisions of Order V of the Code of Civil Procedure, 1908 ("**CPC**"), and do not clearly state the name of the individuals, who affected services on the petitioner, and the name of the person on whom service was affected. He further submitted that the report in relation to summon dated 17.09.2019 stated that notice had

been served on someone else and the report in relation to another summon stated that the petitioner was served by phone and the phone numbers mentioned were not those of the petitioner. He further submitted that the petitioner was arrested on 28.10.2019 and was released on 07.11.2019 and was again arrested on 14.11.2019 and was released on 17.12.2019. The dates on which the ex-parte proceedings were initiated were 30.10.2019 and 31.10.2019 in the two petitions and it is an admitted fact that on both these days the petitioner was under arrest in Adyala Jail, Rawalpindi, and consequently he should not have been proceeded against ex-parte in the defamation matters.

3. The learned counsel for respondent No.1 (**"Respondent"**) submitted that an application for setting-aside the ex-parte proceedings was filed on 30.01.2020 after almost 90-day of the initiation of ex-parte proceedings and in the application for setting-aside the ex-parte proceedings the petitioner did not mention the date of knowledge of such ex-parte proceedings.

4. The learned counsel for the petitioner, in rebuttal, submitted that there were other criminal proceedings initiated by the Respondent against the petitioner and it was during such proceedings that the petitioner acquired knowledge of the proceedings pending before the learned Additional District Court in the defamation matters in which the impugned orders were passed.

5. A perusal of the record reflects that the petitioner was under arrest and in detention on 30.10.2019 on which ex-parte proceedings were initiated. While initiating ex-parte proceedings and striking off the right of a party to defend itself, a court has to be satisfied that a person was deliberately defeating the process of the court or dodging service to delay adjudication of the matter. As the petitioner was admittedly in detention on 30.10.2019 when ex-parte proceedings were initiated against him, this was reason enough to set-aside the ex-parte proceedings when he presented such facts before the learned Additional District Court. The service of notice vests in the party summoned the right to appear before the court either personally or through counsel. As the petitioner was in detention, he could not have appeared before the court on the date when the matter was fixed for hearing and this in itself a sufficient cause not to initiate ex-parte proceedings against him or set-aside the ex-parte proceedings, in the event that they had already been initiated when the fact of his detention was brought before the learned Additional District Court. The learned Additional District Court in the impugned order appears not to have appreciated this aspect of the matter. The impugned order therefore suffers from infirmity and is set-aside.

6. In Writ Petition No.1706 of 2021 the impugned order was passed on 22.01.2021 through which the learned Additional District Court refused to set-aside ex-parte proceedings initiated against the petitioner on 31.10.2019. The facts in this case too are similar to those discussed above. On 31.10.2019 the petitioner was admittedly in jail. The additional aspect in this

petition is that the petitioner was not served through a process server and in order to affect service the learned Additional District Court had ordered issuance of proclamation, which was issued on 29.10.2019, and on such day too, the petitioner was in jail and consequently he could not have acquired knowledge of the proceedings. On this basis too, the ex-parte proceedings ought to have been set-aside, which was not done by the learned Additional District Court while dismissing the petitioner's application through the impugned order. The impugned order therefore suffers from infirmity and is liable to be set-aside.

7. The impugned orders as well as the orders directing initiation of ex-parte proceedings against the petitioner are set-aside. The petitioner will appear before the learned Additional District Court in the defamation matters on **04.07.2022**. On such date the petitioner will take alongwith him his response to the defamation suits filed by the Respondent. It goes without saying that the learned Additional District Court will be free to take penal action in the event that the petitioner seeks to delay proceedings in the matters pending before the learned Additional District Court.

8. These petitions are accordingly **allowed** in the above terms with no order as to cost.

(BABAR SATTAR)
JUDGE