

**ORDER SHEET**

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 35 of 1999**

Date of hearing	Order with signature of Judge
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**Hearing of case**

For hearing of main case

**29-11-2021**

Mr. Yar Muhammad Jalbani, Advocate for the Applicants.

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Through this Civil Revision, the Applicant has impugned judgment dated 04-02-1999 passed by Illrd Additional District Judge, Mirpur Mathelo in Civil Appeal No.81 of 1994, whereby the judgment passed by Civil Judge, Mirpur Mathelo dated 30-06-1994 in Civil Suit No.25 of 1993 has been maintained, through which the Suit of the Respondents was decreed.

2. Learned Counsel for the Applicants has raised only one legal point; that the judgment of the Appellate Court is not maintainable as it is not in conformity with Order XLI Rule 32 & 33, CPC, as no points for determination were formulated, and in support, he has relied upon Muhammad Ashraf v. Syed Ghulam Murtaza and others (1993 CLC 185), Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589) and Muhammad Iftikhar v. Nazakat Ali (2010 SCMR 1868).

3. Insofar as the Respondents are concerned, on the last date of hearing, written arguments have been filed on their behalf.

4. I have heard the learned Counsel for the Applicants and perused the written arguments of the Respondents.

5. Insofar as the only legal issue raised on behalf of the Applicants is concerned, I have gone through the impugned judgment and though it reflects that no points for determination were settled; however, judgment by itself has dealt with the controversy in detail by discussing the evidence as well as contention of the Appellants / Applicants. In that case, even if points for determination were not settled, the same could not render the judgment as null and void. It may be observed that compliance of Order XLI Rule 31 CPC, is not mandatorily applicable in each case; rather it depends on the facts of each case individually and as to how the Appellate Order has been

passed by the Court. In the instant matter as noted the Appellate Court has given findings with proper reasoning on the entire controversy and even if it has failed to settle the points for determination the same would not *ipso facto* render the impugned judgment as being liable to be set aside as the said rule is not absolute in that if the Appellate Court in terms of Order XLI Rule 31, though fails to settle specific points for determination; but on the basis of material available on record and after going through the Record & Proceedings of the trial Court has given its cogent findings attending to the controversy and the objections so raised, then it can suffice and the provision is deemed to be duly attended to. If the Appellate Court in each and every case, has not framed points for determination, it is not that such judgment would be liable to be set aside on that ground alone, whereas, it becomes immaterial, more so, when all the questions raised have been answered by the Appellate Court. It is, but sufficient, that the Appellate Court answers the material questions in its judgment and even if no points are framed for determination it would not *ipso facto* render the judgment illegal or without lawful authority subject to, that the point or controversy has been attended to and decided on the basis of evidence available before the Court. This could only sustain when the judgment is itself without reasoning and also fails to determine the points for determination and not when it is a reasoned judgment attending to all the relevant issues / pertinent controversy between the parties. For such proposition reliance may be placed on the cases reported as **Muhammad Iftikhar v. Nazakat Ali (2010 SCMR 1868)**, **Hafiz Ali Ahmad v. Muhammad Abad and others PLD 1999 Karachi 354**, **Ghulam Samdani and others v. Faqir Khan PLD 2007 Peshawar 14**, **Abdullah and 11 others v. Muhammad Haroon and 8 others 2010 CLC 14** and **Muhammad Azam v. Mst. Khursheed Begum and 9 others 2013 Y L R 454**. Insofar as the controversy in hand is concerned, learned Counsel has not uttered a word on merits and has only raised the above issue which stands decided against the Applicant.

6. In view of such position, this Revision Application is misconceived and is hereby **dismissed**.

Abdul Basit

J U D G E