

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 07 of 2007
IInd Appeal No. 08 of 2007

Date

Order with signature of Judge

Hearing/Priority Case

1. For hearing of CMA No. 279/2007
2. For hearing of CMA No. 280/2007
3. For hearing of CMA No. 3208/2012
4. For hearing of main case

08.05.2018

M/s Mansoor-ul-Arfin and Miss. Neel Kanwal Tariq Advocates for appellant.

Mr. Zahid Hussain, Advocate for respondents No. 1 to 9.

Mr. Ali Ahmed Tariq Advocate for respondents No. 10 to 18.

Salahuddin Panhwar, J: Through instant appeal, appellant has challenged judgment dated 23.12.2006 and decree dated 05.01.2007 passed by the lower Appellate Court in Civil Appeals No.151/2005 & 152/2005 whereby both aforesaid appeals were allowed. The record reveals that two Civil Suits bearing Nos. 761/1986 and 19/1987 were filed in this Court at its principal seat at Karachi, by the respective parties against each other which were consolidated, but subsequently transferred to the Court of VI Senior Civil Judge, Karachi South on count of pecuniary jurisdiction, and the same were renumbered as Suit Nos. 40/2003 and 41/2003 respectively. Trial Court proceeded with the matters and passed a single judgment dated 31.08.2005 and decree dated 06.09.2005 whereby the Suit No. 40/2003 was dismissed and Suit No. 41/2003 was decreed.

2. Perusal of impugned judgment reveals that learned Appellate Judge has failed to frame points for determination which

otherwise is departure from mandatory provision i.e Order 41 Rule 31 CPC, which is reproduced here as under:-

31. The judgment of the Appellate Court shall be in writing and shall state –

a. the points for determination;

b. the decision thereon;

c. the reasons for the decision; and

d. where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

3. Per record, as many as sixteen (16) issues were framed by the trial Court. Learned trial court Judge, while giving judgment, has given findings on all sixteen issues whereas learned Appellate Court admittedly has not given issue-wise findings while reversing the findings of trial court. An appellate Court is competent to *reverse* the findings of the trial court but not without framing of proper **“point of determination; decision thereon and reasoning** thereof. In absence of proper *points of determination* or *reasons* for decision, the judgment of appellate Court would not satisfy the requirement of Order 43 Rule 31 CPC. Such a *decision* would *normally* require remanding of the case so as to avoid any *prejudice* to rights of *aggrieved* party in exercising his right of appeal etc. Reversal of findings of *lower court* would also require discussion of *reasoning*, so given by trial court, because neither a *trial court* nor *appellate* has a discretion to give any decision but *only* what the law and *law* requires for an under discussion *issue*. In short, to reverse findings of any *trial* court, Appellate Court is required to examine every aspect and record its reasons to justify reversal of the adjudication, made by the lower

court because a *reversal* would also result in presumption of *earlier* as wrong. Such procedure has not been adopted by the Appellate Court which is against the maxim of “**Accumni observentia non-est recedendum**” (*if a thing is required to be done in a particular manner, it has to be done in that manner, if not, would be unwarranted under the law*).

4. Learned counsel for the respondents are not in a position to controvert the legal position that how this judgment is maintainable. This is a fit case of remand. Accordingly, with the consent of parties, impugned judgment recorded by Appellate Court is hereby set-aside and case is remanded back to learned Appellate Court and the same shall be decided by the District Judge preferably within four months by providing sufficient opportunity of hearing to the parties in accordance with law. Parties shall appear before District Judge on 28.05.2018.

Imran Naqvi/P.A

J U D G E