

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
II-Appeal No. 46 of 2016

Date

Order with signature of Judge

1. For orders on CMA No. 781 of 2020.
2. For hearing of CMA No. 7265 of 2016.
3. For hearing of main case.

06th October 2020

Mr. Yousuf Moulvi, advocate for appellant.

At the outset, learned counsel for the appellant contends that instant II-Appeal is against conflicting findings recorded by both the courts below. The case of the appellant is that respondent/defendant failed to execute sub-lease in favour of appellant; therefore, the appellant/plaintiff filed suit, which was contested by the parties; trial court after recording evidence of material witnesses through splendid judgment, discussed all issues and decreed the same, whereas appellate court by reversing the findings, only relied upon Article 79 of Qanoon-e-Shahadat Order 1984, whereby marginal witnesses were to be examined and also failed to frame points of determination, which is violation of mandatory provisions of Order 41 rule 31 CPC, whereas case of the appellant was entirely different and was not based solely on sale agreement. It would be conducive to reproduce Order 41 Rule 31 CPC, which reads 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.

2. An appellate Court while deciding the appeal is required to frame 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

41 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/her right of appeal etc. Even upholding of the findings of *lower court* would also require discussion of *reasoning* 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 uphold or reverse the findings of any *trial court*, Appellate Court is required to examine every aspect and record its reasons to justify its decision. Such procedure has not been adopted by the Appellate Court which is against the maxim of "*Accummi 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).

3. Though notices were issued to the respondent No.2, but they choose to remain absent, therefore, after publication in the newspaper, service against them was held good. This is a fit case of remand. Accordingly, impugned judgment recorded by the appellate court is set aside; case is remanded back to the appellate court to hear the parties and decide the case afresh.

SAJID

JUDGE

