

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
II-Appeal No. 29 of 2012.

Date	Order with signature of Judge
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1. For hearing of CMA No. 1126/2012 (Stay).
2. For hearing of main case.

19th October 2020

Mr. Z.U. Mujahid, advocate for appellant.

Mr. Raja Aftab Ahmed Khan, advocate for Respondents No. 1 to 3 & 5.

Heard learned counsel for the respective parties.

Admittedly suit was dismissed with findings recorded by the trial Court with details comprising on pages No. 349 to 371; all findings were reversed by the appellate Court through short paragraph comprising of five lines.

2. It is observed that 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 court* 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 recedenum”* (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. While reversing the findings of the Trial Court, the appellate Court is bound to pass a judgment by adjudicating all the issues as agitated and decided by the trial Court, but, such exercise was not undertaken by learned Appellate Court, hence, impugned judgment is set aside, case is

remanded to the appellate court to hear the parties and decide the same after examining complete record including evidence preferably within four months from today.

The captioned appeal stands disposed of in the foregoing terms.

JUDGE

SAJID