ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI II-Appeal No. 11 of 2015.

Date Order with signature of Judge

- 1. For hearing of CMA No. 9403 of 2017 (Stay).
- 2. For hearing of main case.

21st January 2021.

Mr. Imran Ahmed, advocate for appellant.

Heard learned counsel for the appellant.

It is settled principle of administration of justice that an appellate Court while deciding the appeal is required to frame "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 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 "Accumni 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. Appellant would be at liberty to file application with regard to additional evidence, if any.

The captioned appeal stands disposed of in the foregoing terms.