ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
IST APPEAL NO. 152 / 2010

ORDER WITH SIGNATURE OF JUDGE

Present:-
Mr. Justice Mushir Alam, C.J.
Mr. Justice Muhammad Shafi Siddiqui.

For katcha peshi.
Statement along with PS Copy of plaint filed by appellant's counsel.
R & P in one part is tagged herewith.

19.12.2012.

M/S Samia Faiz Durrani & Manzoorul Haq
for Appellant.

Mr. Muhammad Saleem Thepdawala for respondent.

Muhammad Shafi Siddiqui, J.- Learned counsel for appellant has challenged the final Judgment and Decree dated 25.10.2010 passed by Banking Court whereby Suit filed by the appellant was dismissed.

2. Brief facts of the case are that appellant filed Suit for recovery of sum of Rs. 5,383,162/- before the Banking Court at Karachi. Upon service of summon the respondent filed leave to defend application and on consideration of facts and circumstances the same was dismissed vide order dated 27.1.2010. The salient features of the order for dismissal of the leave to defend application are as under:-

a. *The vehicles were received by the defendants/respondents from its vendor M/s. Afzal Motors Karachi on 30.8.2005.*
b. *Default of lease/rentals under the agreement.*
c. *The repairs of the body of the vehicle is a private issue between defendant No.1/respondent and M/s. Fakhruddin & Company Pvt. Ltd.*

d. The admission of the liability of repayment of the installments.

3. On the above findings, leave to defend application was dismissed.

4. After the dismissal of the leave to defend application the parties were directed to submit their breakup along with supporting documents. Consequently, after submission of the documents and after hearing of arguments the learned Banking Court rediscovered and reached to the conclusion that the leased assets were never handed over to respondent/defendant which was not considered at the time of hearing of leave to defend application. Such finding at the conclusion resulted in dismissal of the Suit which has now been challenged in this First Appeal.

5. Learned Counsel for the appellant submits that in terms of subsection 11 of Section 10 CPC after the rejection/dismissal of the leave to defend application the Banking Court has no choice but to pass judgment and decree in favour of the appellant/plaintiff against defendant/respondent forthwith. Learned Counsel further submits that the dismissal of the suit filed by the financial institution under the F.I.O. 2001 is against and contrary to the mandate of the above provision. Learned Counsel submits that all those points on the basis of which the suit was dismissed were argued by respondent at the time of hearing of leave to defend application and as such it was not open for him to review such findings. Learned Counsel in support of above contentions has relied upon the following case laws:

i) Messrs Ahmad Autos v. Allied Bank of Pakistan Limited (PLD 1990 SC 497)

ii) Mrs. Jawahar Afzal v. M/s United Bank Limited (2003 CLD 119)

6. In the case of Messrs Ahmad Autos ibid the Hon'ble Supreme Court has held as under:-

> *"13. With due deference to the learned Judge, we may point out that the above observation of the learned single Judge seems to be not in consonance with the provision of Rule 2 of Order XXXVII CPC which inter alia provides that in case a defendant does not obtain such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree. Additionally in the instant case the Special Court before passing the judgment and decree had examined the above question and observed that the suit claim was verified on oath, which was not controverted."*

7. The above judgment was passed in terms of the Banking Companies (Recovery of Loans) Rules, 1980 and not on the basis of FIO 2001.

8. In another case of Mrs. Jawahar Afzal v. United Bank Limited (2003 CLD 119) it was held as under:-

> *"7. Trial Court has passed the decree as a consequence of dismissal of application of applicant for leave to defend the suit. During the course of arguments learned counsel for the appellant has not said a single word to challenge the said order or to say that it was passed illegally or improperly. In our humble view, after dismissal of that application of the appellant, refusing to permit her to defend the suit. Trial Court was left with no option but to decree the suit. In the circumstances, we do not find any merit in this appeal and dismiss the same with no order as to costs along with listed application."*

9. As against this the learned Counsel for the respondent has categorically submitted that the question of handing over assets under

the lease agreement were never considered with application of mind by the Banking Court while considering leave to defend application and it was wrongly assumed that the lease assets were in fact handed over to the respondent/ defendant. Learned Counsel further submits that provisions of subsection 11 of Section 10 CPC are not mandatory and after dismissal of the application for leave to defend the Banking Court may decide the suit in accordance with law and ultimately may dismissed the same. Learned Counsel further submits that despite the fact that the defendants/respondents did not obtain leave to defend the suit, it was the duty of the learned Judge of Banking Court to have decided the case in accordance with law without being influenced by the dismissal of the leave to defend application. Learned counsel for the respondent in support of his arguments has relied upon the following:-

i) CM Textile Mills (Pvt.) Ltd. v. Investment Corporation of Pakistan (2004 CLD 587)

ii) Bankers Equity Limited v. Bentonite Pakistan Limited (2010 CLD 651)

10. As far as the case of CM Textile Mills ibid is concerned it appears that it is filed under Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act 1997 and not under FIO 2001 which provides a special section 10(11) to deal with the proceedings after dismissal of leave to defend application.

11. In the case of Bankers Equity ibid the Division Bench of Lahore High Court held as under:-

"18. The contention of the learned counsel for the appellants that after the dismissal of the petition for leave to appeal by the Judge Banking Court, the suit of the plaintiffs should have been decreed automatically is not correct. The Courts of law are under a legal obligation to apply their mind and correct law notwithstanding the fact that defendant in the suit has appeared or not before the Courts during the proceedings. Reliance is placed upon judgment reported as Haji Ali Khan and Company, Abbottabad v. Messrs Allied Bank of Pakistan Limited, Abbotabad PLD 1995 SC 362.

19. Respectfully following the case-law already holding the field, this Court is of the confirmed opinion that the statement of facts narrating the accounts given in paragraph No.18 of the plaint and reflected in the documents annexed with the plaint have been held to be not a statement of account as visualized by the provisions of Banker's Books Evidence Act, 1891 and therefore the plaint in the suit instituted by the appellants was not supported by the statement of accounts as per provisions of section 9(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, which provisions are held in the earlier judgments passed by the two Division Benches of this Court to be mandatory. The plaint has, therefore, been rightly rejected by the learned Judge Banking Court/Single Judge of this Court vide impugned judgment dated 13.3.2002."

12. We have heard the learned Counsel for the parties and perused the record. It is a matter of fact that vide order dated 27.1.2010 the application for leave to defend was dismissed with direction to the parties to submit their accounts/break up along with supporting documents whereas at the time of the judgment and decree the Banking Court reached to the conclusion that the defendants deposited with the plaintiffs as security a sum of Rs.6,740,000/- which is still in their possession. In terms of the judgment impugned by the appellant, the Banking Court found it appropriate to dilate upon the factum of the handing over/delivery of possession of leased assets before passing any decree. In terms of the impugned

judgment/decree the appellant has not been able to satisfy the Banking Court about handing over of leased assets as well as break up filed. Such intricated questions were raised at the verge of deciding the suit itself, which were tentatively looked into at the time of considering leave to defend application.

13. We have perused the relevant law i.e. subsection 11 of the Section 10 of FIO 2001 which leaves very little room for the Banking Court to reconsider the same issue, which were addressed at the time of dismissing leave to defend application and were declined and the Banking Court was only obliged to pass judgment and decree in favour of the plaintiff and against the defendant forthwith after dismissal of such application of course subject to just legal exceptions when the suit may be dismissed on account of perusal of the plaint/documents, statement of accounts and where banking Court should not in routine or cursory manner decree the suit even if the borrower failed to obtain leave from the concerned Banking Court. However, these exceptions would not allow the banking Court to disturb the admitted questions, which were determined while deciding leave to defend application and was not obliged to re-discover such facts while deciding the suit itself. Although the findings that were arrived at while dismissing leave to defend application could not be challenged in view of bar under section 22(6) of the F.I.O 2001 and since the said interlocutory order merges with the final order/judgment the same was not challenged by the respondent as in terms of final order the suit itself was dismissed. It is a matter of fact that while disposing of the leave to defend application the parties were directed to submit the break up along

with the supporting documents which led to such final conclusion. Certain documents appears to have been filed by appellant even after dismissal of leave to defend application. These two orders dated 27.1.2010 and 25.10.2010 are apparently contradict each other as far as delivery of lease assets are concerned. By looking at such complicated and intricated questions of handing over lease assets to respondent which are under scrutiny in this appeal we feel that a simple grant of this appeal in terms of subsection 11 of section 10 would not meet the ends of justice as it would lead to existence of impossible contradictory or unworkable state of affairs as the leave refusing order would still holds the field and the findings therein were against the defendant on a substantial question of law and fact.

14. As far as the delivery of possession of lease assets are concerned, learned counsel for the respondent has relied upon the case of Tariq Rafique Sheikh v. Citi Bank reported in 2008 CLD 1252. The Division Bench of Lahore High Court in the aforesaid case observed that the Bank failed to prove or establish that the leased car was delivered to the appellant and remained in his house. It was further observed that without determining the factum of the delivery of the possession, the Banking Court could not pass decree, which was held to be illegal and not sustainable under the law. The operative part of the said judgment is reproduced as under:-

> *"12. The essential of a valid lease, is the delivery of leased assets. There is no lease when there is no "lease property". The lease commences when lease assets are delivered and the date on which the parties signed the lease agreement is not material in this regard. A legal and valid lease is one where the hire grantor has delivered the possession of the leased assets to the*

hirer. In the absence of possession, the rights and obligations of the hire grantor and hirer are not created in the eyes of law.

13. In the case in hand, the plaintiff has not proved or established that the leased car was delivered to the appellant and remained in his use. Registration book of the leased car speaks of its possession, with another person viz Muhammad Akram Sheikh. Banking Court without determining the factum of delivery of possession has proceeded to pass the decree. Such decree is not legally sustainable.

14. For the foregoing, this appeal is allowed, the impugned judgment and decree passed by learned Banking Court being not sustainable and are set aside. Resultantly the suit of the respondent is deemed to be pending. The appellant is granted leave to defend the suit subject to his furnishing adequate security for the suit amount, to the satisfaction of learned Banking Court. Parties to bear their own costs."

15. In this case also prima facie, a substantial question that has been raised by the respondent which has been discussed in the judgment would remain unattended if the judgment and decree is simply set aside or even reversed. No doubt the respondent's case that no lease assets were handed over to them is a substantial question of fact and law under the circumstances of the case, however, findings in terms of order dated 27.01.2010 which were reached contrary to the arguments of the learned counsel for the respondent could not be challenged. Prima facie the Banking Court in such a situation where the delivery of possession is seriously disputed in terms whereof the respondent was able to produce certain documents to establish his claim that he has not received the possession of lease assets, the learned Banking Court ought to have granted leave to the respondent on such issues. However that has not been done earlier in the order dated 27.01.2010 and subsequently it has been taken care of in the

judgment and decree that was ultimately passed by the Banking Court on 25.10.2010. We are conscious of the fact that this is an appeal arising out of the judgment and decree and jurisdiction that is being exercised by us is in continuation of the original suit and as such the Court is empowered to pass any order that can be made by a trial Court. The respondent could not file appeal against the findings of leave refusing order in view of the bar under section 22(6) of the F.I.O 2001 which order ultimately merges with the final order whereby the suit filed by the appellant was dismissed and therefore, the respondent did not file any appeal in respect of those findings as they were only tentative and merges with the final judgment and decree. As we have already observed that a simple order of setting aside the impugned judgment and decree dated 25.10.2010 would not meet the ends of justice as the interim order passed on leave to defend application would then become operative. Such state of affairs and circumstances can be met by exercising discretion available with us.

16. It is settled proposition of law that right of appeal is expressly conferred by law. Where right to appeal, review or revision is expressly taken away by law as is in case in hand where in terms of subsection (6) of Section 22 of the F.I.O 2001, no appeal, review or revision lies against an order accepting or rejecting an application for leave to defend or any interlocutory order, which does not dispose of the entire case before the Court are the category of order that could be questioned in an appeal from the final judgment and decree, both by the appellant and or by the respondents

through cross objections irrespective of fact that such respondents or parties may not have filed any appeal or objection.

17. There is no occasion which has been left unattended by the law specially by Civil Procedure Code. In the instant case also the parties are trapped in a puzzle which seems to be rescued by Rule 33 of Order 41 and Section 107 CPC which are reproduced as under:-

> *"33. Power of Court of Appeal.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection:*
>
> *107. Powers of Appellate Court. (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power---*
>
> *(a) To determine a case finally;*
> *(b) To remand a case;*
> *(c) To frame issues and refer them for trial;*
> *(d) To take additional evidence or to require such evidence to be taken.*
>
> *(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein."*

18. A simple perusal of the above provisions suggests that the appellate Court exercises powers as available to the original Court. As we have observed that simply setting aside of the judgment/decree would not cater the situation that would reach. The respondent's omission of not filing a cross appeal as far as findings of the banking Court while considering leave to defend application is concerned, can be saved in terms of Rule 33 of

Order 41. A detailed research to the rule ibid provides that the appellate Court has enough powers to deal with such situation.

19. In the case of Muhammad Nawaz v. Ahmad Bibi reported in 1995 SCMR 266 the Hon'ble Supreme Court held that the provisions of Order 41 Rule 33 CPC makes it amply clear that the Appellate Court has been invested with wide powers to do complete justice between the parties and may pass any decree or order in favour or against any party notwithstanding the fact that no appeal has been filed against portion of the judgment passed in favour of the appellant or the respondent. The relevant portion of the judgment ibid is reproduced as under:-

> *"The careful deciphering of the provision of Order XLI Rule 33, CPC makes it amply clear that the Appellate Court has been invested with wide powers to do complete justice between the parties and may pass any decree or order in favour or against any party notwithstanding the fact that no appeal has been filed against portion of the judgment passed in favour of the appellant for the respondent. The words "although such respondents or parties may not have filed any appeal or objection" are very much significant for the disposal of the controversy in hand. Rule 22 of Order XLI enjoins that any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow. Any party aggrieved from any judgment or decree has a remedy to prefer appeal against the judgment or decree to the Appellate Court having jurisdiction in the matter and if he feels dissatisfied with a part of the decree he can either straightaway go in appeal or wait till the other party approaches the Appellate Court in which case he has a right to defend the decree on any ground or file cross-objection which has the force of an appeal and the time allowed is 30 days from the service of notice of appeal upon him. If the party does not go in appeal or file cross-objection, the decree passed against him becomes final. However, the Appellate Court is invested with powers under Order XLI Rule*

33 to pass any order but, by no stretch of imagination, it can be interpreted to mean that even if the appeal filed by the party has been dismissed, the Appellate Court in the exercise of its power under Rule 33, Order XLI can undo his earlier judgment and set aside the decree passed against the said party in the appeal filed by the opposite side regarding the part of the decree of which he feels aggrieved and deprive him even of that part of the decree granted in his favour against which the appeal filed by his adversary already stands dismissed. Another unsurmountable difficulty also arises in such an eventuality as the same Appellate Court would be passing two contradictory and inconsistent judgments/decrees, one against the respondents dismissing their appeal against the portion of the decree for specific performance and the other passing a decree in their favour by setting aside the decree for specific performance of the decree in the appeal filed by the opposite sided against them, which has to be avoided at all costs. The learned High Court in the impugned judgment has already dissented from the view taken by the First Appellate Court under Order XLI Rule 33, CPC and concurring with the High Court, we hold that the First Appellate Court in the presence of the order of dismissal of appeal resulting in the maintaining of the decree for specific performance could not legally reverse the finding of the trial Court by setting aside the decree for specific performance and that too, in the appeal filed by the appellant in which the same was not sub judice."

20. Similarly in the case of Khalid Mehmood v. Asghar Ali Bhatti reported in 2005 CLC 1821, the Division Bench of Lahore High Court held that there cannot be any cavil to the proposition that the appeal is a continuation of the suit and the appellate Court can pass any order which ought to have been passed or made as the case may require. The relevant portion of the judgment is as under:-

"There cannot be any cavil to the proposition that the appeal is a continuation of the suit and the Appellate Court, in exercise of its powers under Order XLI rule 33, CPC, can pass any order which ought to have been passed or made as the case may require."

21. In the case of NWFP v. Abdul Ghafoor reported in PLD 1993 SC 418 it is held as under:-

"Reference here may also be made to Order XLI rule 33, C.P.C., which in order to prevent the ends of justice being defeated gives wide discretionary powers to the Appellate Court, to adjudge the rights of the parties, as the ends of justice may demand and pass such decree or order, as ought to have been passed. The Court has also inherent powers under section 151, CPC, to make such orders, as may be necessary for the ends of justice and to prevent the abuse of the process of the Court. These are all enabling provisions; the powers thereunder can be exercised by the Court to cover ostensibly impossible situations, for complete dispensation of justice, for which CPC has been designed, but despite the best efforts of the draftsman, to cater for all possible situations, if it is found lacking in meeting some eventualities, the Court can act ex delicto justice, supply the omission in the procedure, adopt methodology, for effectually carrying out the purpose in view. Reading of these provisions together would amply demonstrates that the Appellate Court enjoys plenary powers to proceed in the matter as it did in allowing the parties to apply to the trial Court under section 12(2) for investigation into the allegation of fraud and misrepresentation."

22. Similarly in the case of Syed Ghaus Bakhsh v. Land Acquisition Collector reported in 2007 MLD 1315, the Divisin Bench of Lahore High Court is of the following view:-

"The appellate Court is empowered, in the interest of justice, to allow appropriate relief to non-appealing parties where the appeal is with regard to whole of the decree and very wide discretion is given to the appellate Court in terms of the order XLI rule 33, CPC in order to prevent the ends of justice from being defeated, as propounded by the august Supreme Court in PLD 1993 Supreme Court 418 (North-West Frontier Province Government, Peshawar through Collector, Abbottabad and another). It has further been held in 1992 CLC 1775 (Muhammad Rafiq Khan v. Province of Punjab through Collector Bahalwalpur, and another) that, the appellant Court has ample power under provision of Order XLI, rule 33, C.P.C. to grant relief to party who had neither filed appeal nor cross-objection.

7. In the above perspective this appeal is allowed, the order, dated 22.7.2002 passed by the learned Senior Civil Judge/ executing Court, Rajanpur is set aside. The appellants are held entitled to recover the compensation to the extent of their entitlement as propounded in the judgment, dated 11.10.1995 passed by this Court. No order as to costs."

23. Similarly in the case of Province of Punjab v. Col. Abdul Majeed reported in 1997 SCMR 1692 the Hon'ble Supreme Court while dilating

upon Rule 33 of Order 41 has held that the Civil Procedure Code is in fact enacted to streamline the proceedings of the civil cases before the Civil Court and are thus procedural laws subservient to the cause of justice and such procedural laws could not curtail or limit the powers of the Court to pass order which is necessary to do full justice in the facts and circumstances of the case. The Hon'ble Supreme Court has discussed Section 107 and Rule 33 of Order 41 in detail and the text of such discussion is reproduced as under:-

> "7. *The Code of Civil Procedure, 1908 (hereinafter to be referred as 'the Code' only) was enacted to regulate the proceedings before the Civil Courts. The provisions contained in the Code are mainly rules of procedure. It is well-established that all procedural laws are subservient to the cause of justice and therefore, such laws neither limit nor control the power of the Court to pass an order or decree which is necessary to do full justice in the facts and circumstances of the case. Interpretation of procedural law in a manner, it tends to obstruct the course of justice has to be avoided as far as possible. The framers of the Code were also alive to the above stated ..... underlying object of procedural law and perhaps for this reason and to remove and dispel all doubts in this regard unequivocally provided in section 151 of the Code that 'Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. 'Section 107 of the Code relied by the learned counsel for the appellants reads as follows:-*
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> *Section 107, (ibid), however, is not to be read in isolation. It is to be read with other provisions of the Code. We have already referred earlier to section 151 of the Code which provides that the provisions of the Code do not limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. The power as is referred in section 151 of the Code is inherent in every Court and for its exercise no support from any enacted law is necessary. Section 2(18) of the Code defines "rules" as the rules and forms contained in the First Schedule or made under section 122 or 125 of the Code. Section 121 of the Code states that the rules in First Schedule shall have effect as if enacted in the body of the Code until annulled or altered in accordance*

with the provisions contained in part X of the Code. Rule 33 of Order XLI which is part of First Schedule reads as follows:-

Section 121 of the Code confers powers on the High Court to frame rules regulating their own procedure and the procedure of the Civil Courts subordinate to it. It is not disputed before us that provision contained in Rule 33 of Order 41 of the Code has not been amended so far in its application to Province of Punjab. The combined effect of sections 121 and 122 of the Code is that section 107 is to be read along with the provisions contained in Order 41, Rules 1 to 37 of the Code. The provisions contained in section 107 and Order 41 of the Code are, however, no exhaustive in so far the powers of Appellate Court are concerned. The Appellate Court, therefore, in appropriate cases where these provisions do not provide for a remedy, and the justice of the case so demands, may have recourse to its inherent power to pass an order which is necessary to meet the ends of justice-------.

8. From the preceding discussion, it follows that the power conferred on the Appellate Court under Order 41, rule 33, C.P.C. is of the widest amplitude and in exercise of this power the Appellate Court is competent to grant relief to a party, notwithstanding the fact that such party failed to prefer an appeal or submit any cross objection. However, in granting relief in such cases the appellate Court will be guided by principles of equity, justice and good conscience and the fact that withholding of relief would result in a contradictory, unworkable or impossible order/ decree. Therefore, when the Appellate Court reaches a conclusion in a case that by withholding the relief to a non-appealing respondent or to a respondent who omitted to file cross-objection grave hardship or injustice is likely to result to it or that the judgment or orders will be rendered contradictory, it will be a good ground for exercise of power under Order 41, Rule 33, CPC to grant appropriate relief to a non-appealing respondent or to a respondent who omitted to file cross-objection in the appeal. In the case before us, the learned Judges of the High Court having reached the conclusion that the price of land acquired should have been assessed at Rs.4,666 per Marla, were of the opinion that in the circumstances of the case it would be unfair if the benefit of such assessment of market value of the land is not extended to those land owners who failed to file the appeals or cross-objections. Although it was not so expressly stated in the impugned judgment by the learned Judges but from the trend of reasoning, it is clear to us that the learned Judges were of the view that it would lead to contradiction in terms, if some of the landowners in the same vicinity are awarded compensation at higher rate while others are paid at a much lower rate of assessment. The learned Judges, therefore, took the view that the case was fit for exercise of power by them under Order 41, Rule 33, C.P.C. by awarding compensation at a uniform rate even to those respondents who had either omitted to file the appeals against

the judgment of referee Court or had failed to prefer cross-objections in the appeals filed by the appellants. The above approach by the learned Judges for exercise of their jurisdiction under Order 41, Rule 33, C.P.C. cannot be treated as unjustified or irrelevant so as to call for interference by this Court."

24. In view of such state of affairs where two orders contradict each other in the same matter and apparently the trial Court had disposed of the leave to defend application in evasive manner without any reference to material on record and in view of the fact that while touching the crucial and substantial issues of facts and law regarding lease assets, we propose to remand the case to the Banking Court for recording evidence on the questions involved in accordance with law and the above judgments in Para 17 to 22 fortify our view in reaching such conclusion.

25. The impugned order dated 25.10.2010 as well as the order dated 27.1.2010 are hereby set aside, application for leave to defend the suit filed by the respondent is hereby granted unconditionally and the learned Banking Court is directed to record evidence on disputed question of facts regarding the handing over of the possession of the leased assets under the agreement and decide the case afresh without being influenced by any observation made in this judgment. Both the learned Counsel agree that they would cooperate and would make their best efforts to have the suit disposed of within shortest possible time preferably within three months from the date hereof.

The appeal stands disposed of.