

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
R.A. No. 93 of 2008

Date _____ Order with signature of Judge _____

1. For hearing of CMA No. 1185 of 2009.
2. For hearing of CMA No. 7994 of 2018.
3. For hearing of CMA No. 3819 of 2017.
4. For hearing of main case.

26th November 2020.

Mr Sami Majeed, advocates for applicant.
Malik Ayaz Sharif, advocate for respondent No.1.

Heard learned counsel for the respective parties.

2. Admittedly, the findings recorded by the appellate Court are not falling within the terms of adjudication; 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. In case of 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 upholding 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, who shall decide the appeal after determination of fresh grounds in view of grounds taken in appeal and decide all issues as recorded

by the court below in juxtaposition of arguments as raised by the respective parties. This exercise shall be completed within two months.

JUDGE

SAJID