IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE MAQBOOL BAQAR.
MR. JUSTICE IJAZ UL AHSAN.

CIVIL PETITIONS NO. 4703 AND 4704 OF 2017.
(On appeal against the judgment dt. 24.10.2017 passed by the High Court of Sindh at Karachi in Appeals No. 7 and 8 of 2015).

Pakistan Refinery Ltd, Karachi. ...Petitioner(s) (in both cases)

Versus

Barrett Hodgson Pakistan (Pvt) Ltd. and others. ...Respondent(s) (in both cases)

For the petitioner(s): Mr. Rashid Anwar, ASC
Syed Rafaqat Hussain Shah, AOR.

For the Federation: Mr. Waqar Rana, Addl. A.G.P.

For respondent No.2: Mr. Makhdoom Ali Khan, Sr. ASC
Mr. Zahid F. Ibrahim, ASC

Date of Hearing: 11.01.2018.

ORDER

EJAZ AFZAL KHAN, J.- These petitions for leave to appeal have arisen out of the judgment dated 24.10.2017 of a Division Bench of the High Court of Sindh Karachi whereby it dismissed the appeals filed by the petitioners and upheld the judgments and decrees of the learned Single Judge of the High Court.

2. On 15.12.2017 we observed as under:-

> *"Contends, inter alia, the controversy emerging in this case is revolving around the interpretation of a provision of law but in any case this provision cannot be interpreted in a vacuum by ignoring the hard and undisputed facts showing the location of the dangerous installation like oil tanks within the distance of less than 200 feet and that the First Court of Appeal and Final Court of fact could have thrashed out all these aspects with clarity but it appears to have handed down a finding in a slipshod manner in derogation of the provision contained in Rule 31 of Order XLI CPC and that the finding thus rendered cannot be maintained.*

2. *Learned ASC appearing for the caveator contended that the petitioner does not appear to have enforced the rule sought to be enforced against the respondent, across the board as another building exposing the refinery to the same danger has not been objected to. Be all that as it may, since the impugned judgment is deficient in content on the questions of law as well as fact, we would also like to hear the Federation. As a short point is involved, let the case be listed on 11th January, 2018."*

3. Learned ASC appearing on behalf of the petitioners contended that the Division Bench of the High Court did not happily deal with the issue raised before it notwithstanding it being first court of appeal and final court of fact was required to deliver a judgment in terms of Rule 31 Order XLI, CPC which clearly mandates that the judgment of the appellate court shall state the points for determination, the decision thereon and reasons for the decision, therefore, a judgment thus rendered cannot be maintained.

4. Learned Sr. ASC appearing on behalf of respondent No.2 by referring to the cases of **Girijanandini Devi and others Vs. Bijendra Narain Choudhry (AIR 1967 SC 1124)** and **Mst. Roshi and others Vs. Mst. Fateh and others (1982 SCMR 452)** contended that the first court of appeal need not state the points for determination, decision thereon and reasons for the decision when it agrees with the view taken by the trial court on the questions of fact and that if the judgment appears to have been handed down in substantial compliance with the provision contained in Rule 31 of Order XLI, reappraisal of the entire evidence, in the circumstances would hardly be called for.

5. The learned Additional Attorney General appearing on behalf of the Federation contended that where the law lays down a manner for doing a thing it must be done that way or not at all; that it is all the more necessary where the law recognises no exception; that a judgment rendered in violation of Rule 31 of Order XLI is no judgment in the eye of law

and that he would not oppose the remission of the case to the Division Bench of the High Court for decision afresh in accordance with law.

6. We have carefully gone through the record and considered the submissions of learned Sr. ASC/ASC for the parties as well as the learned Additional Attorney General for Pakistan.

7. The issue raised in the instant lis has serious implications. Whether it is the trial court or the court of appeal the lis before either of the two has to be decided with due application of mind which should be a writ large on the face of the judgment. Else the rule providing for a reasoned judgment would be reduced to a dead letter. A judgment delivered by the trial Court would not be a judgment in the real sense of the word if it does not conform to the requirements of Rule 5 of Order XX of the CPC. Similarly, a judgment delivered by the first court of appeal and final court of fact would not be a judgment if it does not conform to the requirements of Rule 31 Order XLI of the CPC. The rationale or raison d'etre behind these provisions is that not only the party loosing the case but the next higher forum may also understand what weighed with the court in deciding the lis against it. Such exercise cannot be dispensed with even in the cases of affirmative judgments otherwise who would know that arguments addressed were accepted or rejected with due application of mind. A perusal of the impugned judgment would reveal that the Division Bench of the High Court did not state the points of determination, decision thereon and reasons therefor. What led the Division Bench of the High Court to affirm the finding handed down by the learned Single Judge of the High Court has neither been adverted nor alluded to. Arguments of the learned counsel for the parties have been reproduced in the impugned judgment but whose arguments merited acceptance and whose arguments merited rejection have been eluded altogether. The judgment against this background cannot be said to have been rendered in substantial compliance with Rule 31 of Order XLI CPC. We, therefore, do not agree with the argument of the learned Sr. ASC for the respondent that the

impugned judgment has been handed down in substantial compliance with Rule 31 of Order XLI CPC. The judgments rendered in the cases of **Girijanandini Devi and others Vs. Bijendra Narain Choudhry** and **Mst. Roshi and others Vs. Mst. Fateh and others (supra)** are, therefore, not applicable to the case in hand. Even otherwise, we would not encourage an argument of such tenor which would tend to pass the buck of responsibility to the next higher forum and require the latter to do what is the exclusive domain of the first court of appeal and final court of fact and set at naught the parameters prescribed for exercise of jurisdiction at different levels of hierarchy. An argument with such implications would rather hamper than advance the cause of justice when even an executive authority under Section 24-A of the General Clauses Act is required to record reasons for making the order or issuing the direction. Having thus considered, we don't think the impugned judgment conforms to the requirements of Rule 31 of Order XLI CPC by any stretch of imagination. It thus cannot be maintained.

8. For the reasons discussed above, these petitions are converted into appeals and allowed, the impugned judgments are set aside and the cases are sent back to a Division Bench of the High Court for decision afresh in accordance with law. As the issues in these cases involve substantial questions of law of public importance, they be disposed of as expeditiously as possible but not later than a period of three months.

ISLAMABAD.
11.01.2018.
M. Azhar Malik
'APPROVED FOR REPORTING