



recording evidence on the sole issue between the Plaintiff and the intervener.

3. The order sought to be reviewed was passed on the application of Interveners (CMA No.2003/2015) in continuation of the order in HCA No.62/2014 as there is no other controversy left in the suit. This application appears to have been filed precisely to frustrate the order passed in High Court Appeal No.62/2014 dated **15.4.2014** and the order under review dated **13.2.2015**. Till date no evidence has been recorded, and the learned counsel admits that it was partly due to the pendency of this review application and partly on account of adjournments sought by the parties. It is settled law that issues can be resettled by Court even after recording of evidence and just before final order. It could be done suo-moto by the Court in terms of **Order XIV Rule 5 CPC** or on the request of the parties. The provisions of Orders XIV Rule 5 CPC reads as follows:-

5. **Power to amend, and strike out, issues.** (1) The Court may at any time before passing a decree amend the issue or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

4. The purpose of above provisions of CPC is to ensure that recording of evidence of the parties should not be postponed on the pretext of any issue, according to either party, was properly framed, left out to be framed or not properly framed by the Court. I may add, the counsel when filed this application (CMA No.3761/2015) was not sure that whether the order

dated **13.2.2015** under review contained typographical error or it was result of overlooking certain facts on the face of the record. Nor he has shown what prejudice has been caused to his client for which the review was necessitated. The provisions of review of an order under **section 114 CPC** or **Order XLVII Rule 1 CPC** and the provisions of **section 151 CPC** for correction of clerical or arithmetical mistakes in the order cannot be invoked simultaneously.

5. In view of the above legal and factual position, the failure of the applicant to record evidence on the pretext of pendency of review application was a calculated move to delay the decision on merit on the sole issue “whether the Interveners are legal heirs or not”. In the face of law quoted above, an application like the one in hand in a case pending since 1998, I can express my feelings by borrowing a famous expression from Shakespeare and modify it to read **“delay, thy name is advocacy”**.

6. In view of the above facts and circumstances, this application is dismissed with cost of Rs.10,000/- to be deposited in favour of Sindh High Court Bar Library within two weeks.

*SM*

JUDGE