ORDER SHEET IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.379/1980

Date Order with signature of Judge

- For order on commissioner report dated 18.10.2021.
- For hearing of CMA No.15284/2021.

03.12.2021

1.

Mr. Jawwad Raja advocate for plaintiff.

Mr. Ahmed Fazeel advocate for defendant.

Admittedly issues were framed in present suit in 1984 and matter was listed for evidence, with consent of parties 16 issues were framed. At this juncture through listed application applicant seeks framing of additional issues under order XIV rule 5 CPC on the plea that these issues are within the pleadings and that the court is competent to frame the same having been covered in the claim of the plaintiff.

- 2. In contra, learned counsel for defendant while relying upon 2004 SCMR 1524 contends that present application is barred by law and same is afterthought, matter is for evidence however it covers earlier issues framed and plaintiff failed to submit application within time.
- 3. While examining the judgment of the supreme court as referred above which speaks that: "It is settled principle of law that if once the parties are alive to the contention raised and when once evidence is adduced in support of such contention, the framing or nonframing of issues loses significance."

In view of above, when issues are already framed in 1984, almost evidence has come on record; therefore at this juncture framing of additional issues loses their value, accordingly listed application is dismissed. Learned commissioner shall proceed within the mandate and submit report within three weeks.

JUDGE

ΙK