

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

SMA No. 252 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For order on CMA No.245 of 2020.
2. For order on CMA No.246 of 2020.

10-03-2020

Mr. Muhammad Abdur Rehman, Advocate for the Petitioner.

1-2] Learned counsel submits that these contempt applications have been moved inasmuch as the concerned Mukhtiarkars are not mutating the properties covered by the Probate. By order dated 11-02-2010 this Court had raised a question on the maintainability of such applications. Learned counsel submits that the refusal of the Mukhtiarkars to mutate the properties on the presentation of the Probate amounts to a disregard of the 'process' of the Court within the meaning of section 3 of the Contempt of Court Ordinance, 2003. However, that section 3 refers to a 'process' which a person "is legally bound to obey", and while a Probate may authorize the Executor to administer the estate of the deceased and apply for a mutation to the names of the legal heirs, it is not a direction by the Court to any third-party to do, or to refrain from doing a certain act. That is also so for the reason that a Probate, or for that matter Letters of Administration and a Succession Certificate, are issued on the premise that the matter is non-contentious. In other words, the said certificates are not a 'decree' passed by a Court. Thus, where a person or authority to whom a Probate, or Letters of Administration or a Succession Certificate is presented to demonstrate authorization to act for the estate of a deceased, and such person/authority refuses to facilitate the Executor or Administrator, the Executor or Administrator can invoke remedies available at law. Therefore, these contempt applications are misconceived and are dismissed.

JUDGE