

**(2010) 03 DEL CK 0375**

**In the Delhi High Court**

**Case No : Cont. Cas. (C) No. 957 of 2009**

Shri Puneet Parkash

APPELLANT

Vs

Shri Jai Parkash and Others

RESPONDENT

**Date of Decision : 16-03-2010**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 39 Rule 2A  
Contempt of Courts Act, 1971 — Section 13

**Citation : (2010) 03 DEL CK 0375**

**Hon'ble Judges : S.N. Dhingra, J**

**Bench : Single Bench**

**Advocate : H.L.Tikoo and Vivek Singh, for the Appellant; Chetan Sharma and Ankur Goel, for the Respondent**

**Final Decision : Dismissed**

## Judgement

Shiv Narayan Dhingra, J.—In a suit for partition filed by the petitioner, being CS(OS) No. 189/2009, the parties arrived at a family settlement through Mediation Cell and the family settlement was duly signed by the parties. The parties made an application under Order 23 Rule 3 CPC to the Court for passing decree in terms of the family settlement. The Court vide order dated 17th April, 2009 decreed the suit in terms of the family settlement. There was one sentence in the final order that the parties shall remain bound by the terms of settlement. The petitioner claims, that this amounted to an undertaking given to the Court and therefore he had a right to move the Contempt Petition against the respondents for non-compliance of the family settlement and i.e. non-payment of the maintenance to the petitioner (son) by the respondents (parents).

2. I consider that the Contempt Petition was not maintainable. Provisions of Contempt of Court cannot be used as an alternative to the execution. Since the terms of decree, had been clearly settled and the suit of the petitioner was decreed by consent of the parties, if any part of the terms of settlement are not being complied with, the petitioner is at liberty to execute the decree by way of

filing an Execution Petition. The Supreme Court in R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, observed that the weapon of contempt is not to be used in abundance or misused and normally it cannot be used for execution of the decree or implementation of an order for which an alternative remedy in law is provided for. The discretion given to the Court (of Contempt) is to be used for maintenance of Court's dignity and majesty of law. An aggrieved party has no right to insist that Court should exercise such jurisdiction as contempt is between a contemnor and the Court. Similarly in Food Corporation of India Vs. Sukh Deo Prasad, the Supreme Court observed that the contempt jurisdiction, either under the Contempt of Courts Act, 1971 or under Order 39 Rule 2A CPC, is not intended to be used for enforcement of money decrees or directions/orders for payment of money. The process and concept of execution is different from the process and concept of action for disobedience/contempt.

3. The petitioner relied on Rama Narang Vs. Ramesh Narang and Another, wherein Supreme Court observed that merely because an order or decree is executable, would not take away the Court's jurisdiction to deal with a matter under the Act provided the Court is satisfied that the violation of the order or decree is such, that if proved, it would warrant punishment u/s 13 of the Act on the ground that the contemnor, substantially interfered or tends substantially to interfere with the due course of justice.

4. I consider that it is not a case where respondents could be stated to be substantially interfering or had been interfering with due course of justice. It is a case where a compromise decree was passed and thereafter both sides alleged that the parties had not performed their part of the terms of the settlement. This can only be gone into by the Executing Court and not by this Court under contempt jurisdiction.

5. I do not find that it is a case where Court should exercise contempt jurisdiction. The petition is hereby dismissed.