

**Appellant Vs. Respondent**

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**SooperKanoon Citation :** [sooperkanoon.com/1132828](http://sooperkanoon.com/1132828)

**Court :** Kolkata

**Decided On :** Feb-28-2014

**Judge :** Jayanta Kumar Biswas

**Appellant :** Appellant

**Respondent :** Respondent

**Judgement :**

In The High Court At Calcutta Ordinary Original Civil Jurisdiction Present: The Honble Mr Justice Jayanta Kumar Biswas.

GA NO.2354 OF 2009 EC NO.55 OF 2009 CS NO.431 OF 1997 M/S.SUNDARLAL & SONS & ANR.v.M/S.CHATTERJEE POLK PRIVATE LIMITED Mr.Abhrajit Mitra, Mr.Jishnu Chowdhury, Mr.Sarvapriya Mukherjee, Mr.Satadeep Bhattacharya, Mr.Soumabha Ghose & Mr.A.K.Roy, advocates, for the decree-holders.Mr.Rudrajit Sarkar, advocate, for the applicant.

Mr.Indrajit Sarkar, advocate, for the joint administrat ORS.Heard on: February 28, 2014 Judgement on: February 28, 2014 The Court:- The GA No.2354 of 2009 dated August 24, 2009 has been filed by one Asim Guha Thakurata under s.47 CPC.

The decree-holders instituted EC No.55 of 2009 for execution of the decree passed in the suit (C.S.No.431 of 1997) on January 4, 1999 and Asim has filed the GA questioning the executability of the decree.

Asim was not a party to the suit and Mr R Sarkar appearing for Asim has submitted that Asim is not a representative of any party to the suit as well.

Hence the question is how Asim can maintain the s.47 application.

Mr Sarkar has submitted that in view of a division bench decision of this court in Rubiren Engineering Corporation v.

Abhoy Singh Surana & Ors., 1998(2) CHN8 Asim, though a third party to the suit, can maintain the s.47 application.

Mr.Mitra appearing for the decree-holders and saying that the decreeholders do not want to file any opposition to the GA has submitted that Asim being admittedly a third party cannot maintain the s.47 application.

Sub-section (1) of s.47 provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

In para.9 of Rubiren report the division bench said that the s.47 application filed by the third party to the suit concerned was not maintainable.

I am, therefore, unable to see how the decision can be an authority for the proposition that a s.47 application can be filed also by a third party to the suit concerned.

In my opinion, the s.47 application filed by Asim, a third party to the suit in which the decree, put into execution, was passed, is just not maintainable.

For these reasons, I dismiss the GA.

No costs.

Certified xerox.

[Jayanta Kumar Biswas, J.].sd.