

Party Name : SUMIT DAS Vs SREMANTA MAJUMDER & ORS

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

This petition is directed against that part of the order dated 09.09.2015 whereby the learned trial Court has directed issuance of warrants of arrest against the defendant No.2 Shri Sunit Das. The relevant facts are that a suit for rendition of accounts being Title Suit 54 of 2010 was filed in which the present petitioner, defendant No.2 is a party. In that suit on 25th May, 2015 an order was passed, relevant portion of which reads as follows:

“*Defendant no.2 will supply the Book of Accounts, Original Cash Book, Sale Register, etc. to the appointed C.A. Firm (Ratan Kumar Das and Co., Chartered Accountant).***”**

Inform Ld. Advocate, Mr. A. Sengupta, engaged Counsel of the Attorney defendant No.2 to supply all the relevant papers as stated above within 15 days to the C.A. Firm (Ratan Kumar Das and Co., Chartered Accountant), for rendition of accounts.

Supply copy of the order to the plaintiff, defendant nos.2 and 3 and also the appointed C.A Firm. ****

Defendant No.2 will supply the original documents to the C.A. Firm giving Xerox copies to the court and other two partners as well.**”**

It is clear from the order that the defendant No.2 was directed by the Court to supply the books of account, original cash book, sale register etc. to the appointed C. A. Firm. The learned trial Court went to the extent of directing that a copy of the order be handed over to the counsel for the defendant No.2 as well as to the defendant No.2 and the appointed Chartered Accountant. The appointed Chartered Accountant sent a letter to defendant No.2 to comply with this order. The defendant No.2 (petitioner herein) sent a reply stating that those documents are not in his possession. Thereafter the plaintiff filed an application for arrest of defendant no.2 on the ground that he had not complied with the orders of this Court.

The learned trial Court has passed an order, ordering a warrant of arrest be issued against the petitioner. Against this order the petitioner has come before this Court.

At the outset it may be noticed that till date the defendant No.2 has not applied to the trial Court for modification of the order which was passed. This is an order passed in a case with the defendant No.2 is represented by counsel. In case the defendant No.2 does not have the documents in his possession it was his duty to have appraise the Court that this documents are not in his possession and that the order passed on 25th May, 2015 should be recalled or modified. Till the order exists on file, the defendant No.2 is bound to obey the order.

Therefore, I dispose of the petition with the following directions:

(i) That the order issuing warrants of arrest shall remain in abeyance for a period of 15 days from today;

(ii) Within 15 days the petitioner must apply to the trial Court giving reasons in his application and why the order dated 25th May, 2015 should be modified. Thereafter the learned trial court shall decide whether the order is to be modified or not. In case after hearing the parties the trial Court shall decide this question. If the trial Court holds that the order needs no modification and the defendant no.2 still in custody of the documents then the order shall automatically stand revived. In case, however, the trial Court comes to the conclusion that the defendant no.2 is not in possession of the documents and the original documents are destroyed then it will modify the earlier order.