

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6753 of 2015

- =====
1. The State of Bihar through the Collector, District-Darbhangha
 2. The Collector, District-Darbhangha
 3. The Commissioner-cum-Secretary, Water Resources Development Department, Irrigation Building, Patna
 4. The Engineer-in-Chief, North Bihar, Water Resources Development Department, Irrigation Building, Patna
 5. The Chief Engineer, Western Kosi Canal, Water Resources Development Department, Kabirchak, District-Darbhangha
 6. The Superintendent Engineer, Western Kosi Canal, District-Madhubani
 7. The Executive Engineer, Western Kosi Canal, Division-Benipatti, District-Madhubani
 8. The Assistant Engineer, Western Kosi Canal, Sub-Division-Benipatti, District-Madhubani
 9. The Junior Engineer, Western Kosi Canal, Sub-Division-Benipatti, District-Madhubani

.... Petitioner/s

Versus

1. M/S Om Sri Bajrang & Company through its Managing Partner, Smt. Kamal Devi, resident of Village- Sinuara, P.O.+P.S.- Bahadurpur, District-Darbhangha.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shahzad Hassan Khan
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

- 4 09-03-2016 Heard learned counsel Mr. Ashok Kumar Chaudhary
- AAG-13 on behalf of the petitioner-State of Bihar and learned counsel Mr. Anjani Kumar Jha for the respondent.
- 2) This application under Article 227 of the Constitution has been filed by the State of Bihar and the Authorities for setting aside the order dated 08.04.2013 passed by Sub Judge-IV, Darbhanga in Execution Case No. 3/2003.

3) It appears that money suit was filed by the respondent against the petitioner being money suit no. 8/99. The suit was decreed by the trial court. The State authorities-petitioners did not challenge the judgment and decree passed by the trial court. The plaintiff decree holder filed Execution Case No. 3/2003 for realization of the decretal amount with interest granted by the trial court. In the Execution Case, the State authorities filed chart calculation showing the amount to be adjusted against the decretal amount and the amount to be paid to the decree holder.

4) According to the petitioner amounts of Rs. 1,64,948/- to be adjusted on account of the cost of materials supplied by the judgment debtors to the decree holder contractor, Rs. 8,968 to be adjusted towards income tax charges and Rs. 7,011 is to be adjusted towards sales tax charge total being Rs. 1,80,927/-. The excess amount calculated by the decree holder will be therefore after the deduction of Rs. 2,65,419/- and the interest calculated thereon i.e. Rs. 5,13,143/- which comes to Rs. 7,78,562/- The State authorities therefore filed the calculation chart and objection, claiming that this amount should be deducted from the amount calculated by the decree holder. By the impugned order the Executing Court has rejected the claim.

5) Admittedly all these claims which are being made by



the petitioners before the Executing Court were never raised by the petitioners in the money suit and therefore, after the decree the amount whether are to be adjusted or not is a question of fact which can not be decided afresh by the Executing Court. So far the statement of the learned AAG-13 that the court below has wrongly calculated the decreetal amount along with interest is concerned.

It may be mentioned here that the Hon'ble Supreme Court in the case of **Jay Singh and others Vs. Municipal Corporation 2010 volume 09 Supreme Court cases 385** at paragraph 16 has held that the High Court can not lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it can not substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi-judicial tribunals.

6) In the said decision itself the Supreme Court also held that the exercise of supervisory jurisdiction is not available to correct all errors of judgment of a court or tribunal acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

7) In view of the above settled proposition of law and in

view of the fact that the new case is pleaded before the Executing Court by the State-petitioners, in my opinion, the Executing Court has rightly rejected the application filed by the petitioner. Thus in my opinion no case for interference in supervisory jurisdiction is made out.

Thus this writ application is dismissed.

The interim order if any, is hereby vacated.

(Mungeshwar Sahoo, J)

siddharth/-

U		T	
---	--	---	--