

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.10 Of 2019
(Through hybrid mode)**

M/S Raxon Strips Ltd.

....

Appellant

Mr. P.P.Mohanty, Advocate

-versus-

M/S. K.K.Resources Pvt. Ltd.

....

Respondent

Mr. G.N.Mishra, Advocate

CORAM: JUSTICE ARINDAM SINHA

**ORDER
23 .02.2022**

Order No.

6.

1. Mr. Mohanty, learned advocate, appears on behalf of appellant and submits, there be interference in appeal with impugned order dated 10th January, 2019, whereby his client's application under section 34 of the Arbitration and Conciliation Act, 1996 was held to be barred by limitation and accordingly dismissed. He submits, his client filed the challenge after 90 days but before expiry of 120 days from date of award.

2. Mr. Mishra, learned advocate appears on behalf of respondent.

3. It appears, the lower Court relied on judgment of the Supreme Court in **Union of India vrs. M/s.Popular Construction**, reported in **AIR 2001 SC 4001**, on the passage extracted in impugned order and

reproduced below:-

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are ‘but not thereafter’ used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase ‘but not thereafter’ wholly otiose. No principle of interpretation would justify such a result.”

4. It is clear that the Court below dismissed the challenge as could not be supported by an application made under section 5 of Limitation Act, 1963, for condonation of delay. Said Court proceeded on the basis that the challenge was filed out of time, i.e., made after 90 days and did not look at the condonation of delay application because it was made under section 5 of the 1963 Act as the Supreme Court had declared the law to be that proviso to sub-section (3) in section 34 (1996 Act) would amount to an express exclusion within meaning of section 29(2) of the Limitation Act.

5. Appellant had obviously invoked a wrong provision of law but otherwise sought to explain delay of 16 days beyond 90 days. Reliance on a wrong provision of law cannot deny entitlement to relief,

otherwise available in law.

6. Impugned order is set aside. The section 34 petition is restored to the District Judge, for adjudication as expeditiously as possible.
7. The appeal is disposed of.

(Arindam Sinha)
Judge

Prasant

