

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.29 of 2022
(Through hybrid mode)**

***Dy. General Manager, UCO Bank,
Sambalpur***

Appellant

Mr. Subrat Mishra, Advocate

-versus-

Sangram Keshari Khuntia

Respondent

Mr. Dayananda Mahapatra, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER

27.06.2022

Order No.

- 02.**
1. Mr. Mishra, learned advocate appears on behalf of appellant. He submits, his client suffered award dated 11th August, 2010. His client challenged the award under section 34 of Arbitration and Conciliation Act, 1996. The challenge was dismissed, inter alia, on the ground of jurisdiction. By impugned order dated 31st March, 2022, there were also findings on merits, which is why his client is before Court in appeal.
 2. He submits, declaration of law by the Supreme Court is clear that where the application for setting aside award was made in time but the challenge is rejected on jurisdiction, the party challenging can mount fresh challenge before the Court having jurisdiction, enabled by exclusion of time provided under section 14 of Limitation Act, 1963.

He relies on **Simplex Infrastructure Limited Vs. Union of India**, reported in (2019) 2 SCC 455. He submits, the declaration was based on earlier pronouncement of said Court in **Union of India Vs. Popular Construction Company**, reported in (2001) 8 SCC 470. He submits, there be clarification that impugned judgment cannot be relied upon for any finding on merits, contained therein.

3. Mr. Mohapatra, learned advocate appears on behalf of respondent and submits, he needs time to consider the position of law on the judgments relied upon by Mr. Mishra. On query from Court he submits, the finding on jurisdiction in impugned order ought not to have been made since said Court had itself earlier ruled that it had jurisdiction. On this ground also he prays for time, to produce the order.

4. Court is not inclined to grant adjournment. This is simply because perusal of impugned order shows that respondent itself took the point of jurisdiction. Respondent also advanced arguments on merits. The Court below accepted respondent's contention on jurisdiction. There also are record of arguments advanced on behalf of respondent, on merits of the award under challenge.

5. It has been ascertained from the parties that challenge to the award was filed within the time prescribed in section 34. Appellant appears to be covered by declaration of law made in **Popular**

Construction Company (supra) relied upon in **Simplex Infrastructure Limited** (supra). It follows, appellant is entitled to clarification in respect of impugned order, to effect that it cannot be relied upon as having decided any question on merits of challenge to the award. This however will not prevent respondent from urging the same and other points in a challenge subsequently mounted by appellant, in the Court having jurisdiction.

6. With above clarification amounting to variation of impugned order, the appeal is disposed of.

7. Urgent photostat certified copy be granted to parties on application duly made.

(*Arindam Sinha*)
Judge

Prasant

