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ITEM NO.19

COURT NO.6

SECTION IVA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).30024/2010

(From the judgment and order dated 04/12/2009 in CMP No.60/2009 of The  
HIGH COURT OF KARNATAKA AT BANGALORE)

HMT WATCHES LTD. Petitioner(s)

VERSUS

M/S RAMESH KUMAR & CO. Respondent(s)

(With prayer for interim relief and office report)  
[FOR FINAL DISPOSAL]

Date: 12/11/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. PATNAIK  
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. Rahul Sharma, Adv.  
Mr. P.N. Puri, Adv.

For Respondent(s) Mr. R.K. Kapoor, Adv.  
Ms. Neelam Sharma, Adv.  
Mr. Anis Ahmed Khan, Adv.

UPON hearing counsel the Court made the following  
O R D E R

| Leave granted.  
| The appeal is allowed in terms of the signed order.

| [KALYANI GUPTA] | [INDU POKHRIYAL]  
| COURT MASTER | COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE.]

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2013  
[ARISING OUT OF SLP (C) NO.30024 of 2010]

HMT WATCHES LIMITED ..... APPELLANT

VERSUS

M/S. RAMESH KUMAR & CO. .... RESPONDENT

O R D E R

Heard learned counsel for the parties.

2. Leave granted.

3. By the impugned order, the learned Judge of the High Court has allowed the application of the respondent under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') and appointed an Arbitrator to resolve the dispute between the parties.

4. The only point raised before us by the appellant is that there is no arbitration agreement between the parties and, therefore, the learned Judge of the High Court could not have appointed an Arbitrator to resolve the dispute between the parties.

5. After hearing learned counsel for the parties at length, we find that there is an agreement between the parties executed on 21st September, 2001 for the period from 1st June, 2001 to 31st May, 2004 and the said agreement was extended for another period of one year upto 31st May, 2005 and under this agreement respondent was to act as Clearing and Forwarding Agent of the appellant. This agreement contained arbitration clause. After 31st May, 2005, however, there is no agreement between the parties containing an arbitration clause.

6. Mr. R.K. Kapoor learned counsel for the respondent submitted that the practice that has been followed by the appellant is that the respondent is allowed to continue as Carrying and Forwarding Agent of the appellant even after the expiry of the period of agreement but subsequently, the agreement is renewed for the period after the expiry of the period of the agreement. He referred to the letter dated 29th December, 2007 annexed to the counter affidavit of the Regional Manager (N) of the HMT Watches, New Delhi to General Marketing Manager (DM) of the appellant in which it is stated that the proposal for the renewal of contractual agreement was sent on 1st August, 2006 for extension upto 30th November, 2006 for approval and sanction but the sanction was still awaited.

7. We have perused the aforesaid letter dated 29th October, 2007 annexed to the counter affidavit as Annexure R/B and we find that in the said letter also it is clearly stated that the terms of the contract for carrying and forwarding agent's operation with the respondent has expired on 31st May, 2005 and that although a proposal for renewal has been proposed, sanction for the renewal of the contract is yet to be received from the competent authorities. It is thus clear that the agreements between the parties which contained the arbitration clause have expired on 31st May, 2005 and the agreement has not been extended beyond 31st May, 2005 with the sanction of the authorities. The work in respect of which a dispute has arisen between the parties admittedly relates to the period after 31st May, 2005 and, therefore, are not covered by agreement containing arbitration clause which has expired on 31st May, 2005. The High Court, therefore, was not correct, in coming to the conclusion that there was an arbitration clause and hence the appointment of an arbitrator under Clause 11 of the Act was contrary to the provisions of Section 11 of the Act.

8. Mr. Kapoor, vehemently submitted relying on the decision of this Court in BPL v. Great Eastern Shipping Company Limited AIR (2008) SC 357 that in certain circumstances, the offer is sub silentio and coupled with conduct may constitute an acceptance and therefore, the terms of the contract between the parties can be proved not only by the words but also by the conduct.

9. There cannot be doubt about the aforesaid proposition of law. An agreement can be spelt out from the conduct of the parties and in this case the fact that there was an agreement between the parties cannot be doubted. But what is relevant for deciding whether an arbitrator can be appointed under Section 11 of the Act is whether the agreement between the parties contains an arbitration clause and in this case no document has been shown by respondent to us to show that after 31st May, 2005, there was an arbitration agreement between the parties for referring the dispute to an arbitrator.

10. In the result, the appeal is allowed and the impugned order of the learned Single Judge of the High Court is set aside. The respondent may, however, pursue any other remedy open to him against the appellant and also contend that the period during which he has been diligently pursuing his remedy by way of arbitration should be excluded from the computation of limitation.

.....J  
[A.K. PATNAIK]

.....J  
[V. GOPALA GOWDA]

NEW DELHIS  
NOVEMBER 12, 2013.