

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 609 OF 2015**

Gillette India Limited	... Petitioner
V/s.	
JHS Svendgaard Laboratories Limited	... Respondent

Mr. Advocate Mustafa Sayfiyuddin, Advocate Jaydeep Khattar,
Advocate Hassan Sayfiyuddin, Advocate Dnyaneshwar Jadhav
i/b Legasis Partners for the petitioner.
Mr. Sharan Jagtiyani a/w Mr. P. Ranjan
i/b Halai & Co. for the Respondents.

**CORAM : K. K. TATED, J.
DATED : 24/02/2016**

P.C.:

Heard learned counsel for the parties.

2) By this petition under section 9 of Arbitration and Conciliation Act, 1996 Petitioner is seeking relief in terms of prayer clause (b) and (c). In the present proceedings, this Court (Coram: Smt. R. P. Sondurbaldota, J.) by an order dated 14/12/2015 granted relief in terms of prayer clause (a) & (d). In that order, this Court granted liberty to the Petitioner to move for order in terms of prayer clause (b) or (c), in case, Respondent fails to handover the assets specified in Exhibit 'N'.

3) Learned counsel appearing on behalf of Petitioner submits that as per earlier order dated 14/12/2015, respondent failed and neglected to

hand over the possession of the assets specified at Exhibit 'N'. He further submits that Respondents preferred Appeal Lodging No. 33 of 2016. That appeal stand dismissed on 15/02/2016. He submits that in view of the earlier order dated 14/12/2015 and order passed by Appellate Court on 15/02/2016 and as per clause 20 supplementary agreement (Asset agreement) dated 03/09/2014, they are entitled to the possession of the properties as described in Exhibit 'N'.

4) On the other hand learned counsel appearing on behalf of Respondent submits that as per order passed by this Court on 16/02/2016, they received instructions from their clients that they do not want to provide bank guarantee for sum of Rs. 1,49,87,500/-. He further submits that they have not received any instructions from their clients for handing over the possession of the property as described in Exhibit 'N' as per the earlier passed by this court on 14/12/2015 as well as Appellate Court's order dated 15/02/2016.

5) Learned counsel appearing for Respondent submits that as on today, the entire interest of the petitioner is already protected by this Court by an order dated 14/12/2015, restraining the Respondents in terms of prayer clause (a) & (d) of the petition. Hence, there is no necessity to pass further order for appointment of Court Receiver to take forcible possession and handover those assets to the petitioner.

Hence, there is no substance in the present petition and same to be dismissed.

6) I heard both sides at length. It is to be noted that as per supplementary agreement (Assets agreement) dated 03/09/2012, particularly clause 20, petitioners are entitled to the possession of properties as described in Exhibit 'N' after termination of agreement between the parties. Apart from that the period of agreement between the parties also expired. Considering the fact that though this Court by an order dated 14/12/2015 directed the respondents to hand over the possession of the properties, they failed and neglected to do so. Even the Appellate Court in order dated 15/02/2016 (Appeal Lodging No. 33 of 2016) specifically recorded in paragraph 8 & 9 that petitioners are entitled to the possession of the properties. Paragraph 8 & 9 of order dated 15/02/2016 reads thus:

“8. We are concerned with the invocation of section 9 Application in view of the reasons so mentioned and averred by the respondents. The fact of termination of the contract is not in dispute so also the fact that there is no renewal of the contract. The contract itself provides that once Agreements are terminated the machineries in question which are admittedly owned by the Respondents are required to be returned. Those machineries admittedly are not returned by the Appellants inspite of the termination of the contract. Merely because arbitration

proceedings have been invoked that itself in our view, also cannot be a reason to retain the machineries in such fashion by the respondents. The learned Judge therefore, considering the rival submissions so raised and after going through the averments so made of both parties, by a reasoned order directed the Appellants to hand over the machineries and also passed a protective order pending arbitration proceedings.”

“9. It is settled that while dealing with section 9 Application the learned Judge need to consider the basic principle revolving around the grant of injunction and/or appointment of Receiver and/or attachment of property/machinery. In view of the above admitted facts on record, continuation of use of machinery by the Appellants inspite of termination order therefore, is rightly taken note of and directed to be returned. The submission that Arbitration proceedings are pending that itself cannot be a reason for the Appellants to continue to use those machineries. There is no other material placed on record and/or right to show that the appellant is entitled to retain these machineries, inspite of the termination of the contract and/or no renewal of the Agreement in question. The constant use and nonuse of machineries and/or further the apprehension that machinery/machineries may be damaged just cannot be overlooked. The entitlement/claim even if any, against the respondents so raised, ultimately the Arbitral Tribunal may pass an appropriate order. We are inclined to observe that the respondent's claim at this stage and prayer for returning of the

goods/machineries and protective relief so granted is justified in the facts and circumstances of the case.”

7) In view of the above mentioned facts and the order passed by the Appellate Court, I am satisfied that petitioner has made out a case for allowing this petition in terms of prayer clause (b) in addition to the earlier order passed by this Court. It is made clear that once the possession is taken by the Court Receiver, he should handover the same to the petitioner immediately, without any security.

8) Hence, following order.

(i) Petition is allowed in terms of prayer clause (b) in addition to the reliefs granted by this court by an order dated 14/12/2015. Prayer clause (b) reads thus:

“(b) that pending the hearing and final disposal of arbitration proceedings and making of the Award and implementation thereof and till the date of handing over the physical possession of the assets of the Petitioner to the Petitioner, Court Receiver, High Court, Bombay or such other fit and proper person as this Hon'ble Court thinks fit, be appointed by this Hon'ble Court as Receiver with all powers under Order XL Rule 1 and Order XXXIX Rule 7 of the Code of Civil Procedure, 1908 to attend and search the said factory premises of the Respondent located at Trilokpur Road, Kheri (Kala Amb), Tehsil Nahan, District Sirmour, Himachal Pradesh 173 030 where the assets of the Petitioner

lying with the Respondent under the Asset Agreement a list whereof is annexed at Exhibit N hereto are lying and to make an inventory, seize and take possession/custody thereof and the Respondent, its officers, directors, owners, employees, representatives or any other person claiming through or under them be ordered and directed to deliver up all of the aforesaid to the Court Receiver or to such other fit and proper person as this Hon'ble Court thinks fit and the Receiver shall be entitled (if he considers appropriate or necessary) to avail of police protection or assistance in implementing the aforesaid and the Court Receiver be authorized to break open any locks at the said factory premises for the purposes aforesaid.”

(ii) Court Receiver is directed to handover the possession of the assets to the petitioner immediately after taking possession from the respondents, without insisting any security and royalty to that effect.

(iii) Time is granted to the respondent to comply order dated 16/02/2016 clause (b) that to file affidavit disclosing the particulars of their assets along with encumbrances, if any, within one week from today.

(iv) Petition stands disposed of accordingly.

(K.K.TATED, J.)