

(2010) 12 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

Hotel Nyay Mandir

APPELLANT

Vs

Ishwar Lal Jinabhai Desai

RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Citation : 2011 0 CTJ 154 : 2011 1 CPJ 13 : 2011 1 CPR 21

Hon'ble Judges : B.N.P.Singh , S.K.Naik J.

Advocate : B.S.Supehia , K.K.Shukla , Vikas Upadhyay

Judgement

1. MR. S.K. Naik, Member-This revision petition has been filed by Hotel Nyay Mandir, the opposite party No. 1 before the District Consumer Disputes Redressal Forum, Bharuch (District Forum for short) against the order dated 9.1.2006 passed by the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (State Commission for short), vide which the State Commission while dismissing their appeal and also imposing a cost of Rs. 6,000 on them, has upheld the finding recorded by the District Forum. The District Forum vide its order dated 18.8.2005 had allowed the complaint of the respondent/complainant and directed the petitioner/opposite party No. 1 to refund the amount of Rs. 22 being the excess amount charged towards cold drinks served to the complainant and also pay Rs. 5,000 and Rs. 1,000 as compensation for mental agony and cost of litigation respectively. Besides, the District Forum had also directed the petitioner/opposite party No. 1 to pay a sum of Rs. 1,50,000 to be deposited in a Consumer Welfare Fund within a period of 30 days.

2. BRIEF facts of the case, as alleged by the complainant, are that on 14.5.2003 he purchased four bottles of cold drink "MIRINDA" for which the petitioner/opposite party No. 1 charged excessive amount of Rs. 72 whereas the actual cost of one bottle was Rs. 12.50. The complainant alleged that the petitioner/opposite party No. 1 ought to have charged Rs. 12.50 per bottle as it was the actual price appearing on the label of the bottle but it had charged Rs. 18 per bottle. Taking this sole ground and pleading deficiency in service the respondent filed a consumer complaint before the District Forum praying for, (i) refund of Rs. 22

charged in excess from him; (ii) call for the figures of sale of cold drinks for the last three years at the place of petitioner hotel and direct them to deposit the differential amount as donation with any Consumer Association; (iii) 12% interest on the amount of refund; and (iv) Rs. 5,000 as compensation. The respondent/complainant had also impleaded Pepsico India Holdings Pvt. Ltd. as opposite party No. 2 in the array of the complaint filed by him but no relief was claimed against them. The District Forum after hearing the arguments of the parties allowed the complaint in the manner referred to above.

3. THE petitioner/opposite party No. 1 not satisfied with the order of the District Forum filed an appeal before the State Commission, who too did not find any merit in the same and dismissed it with a cost of Rs. 6,000. Hence, this revision petition by the petitioner/opposite party No. 1.

4. WHILE Mr. B.S. Suphia, Advocate, Mr. K.K. Shukla, Advocate and Mr. Vikas Upadhyay, Advocate have appeared on behalf of the petitioner/opposite party No. 1, the respondent/complainant has filed an affidavit in response to the revision petition and further in response to the notice dated 12th of August, 2009 issued by the Registry for his appearance, in which he has regretted his inability to appear before this Commission because of his "bad health and advance age". We have accordingly heard the learned Counsel for the petitioner and have perused the affidavit filed by the respondent/complainant in response to the revision petition.

5. LEARNED Counsel for the petitioner has assailed the order of the State Commission both on facts and law. On the facts, while he does not dispute that the respondent/complainant had purchased four bottles of soft drink on 14th of May, 2003, but the drink sold was FANTA and not MIRINDA as claimed by the complainant. He further contends that the cost of each bottle of FANTA was Rs. 15 and the petitioner had charged an additional amount of Rs. 3 per bottle as service charges for the facilities which the hotel extended to the consumers. According to him, the cost of each bottle of the soft drink including the service charges was prominently displayed on either side of the wall to the entry of the hotel. He, therefore, submits that the respondent/complainant having full knowledge of the price to be paid including the service charges could not turn around and allege deficiency in service on part of the petitioner. This contention of the learned Counsel can straightaway be rejected as the petitioner has not advanced this plea before the State Commission as would be evident from the memorandum of appeal which is at page 16 of the paper-book. No new ground can be permitted to be taken at the stage of revision. Besides, the District Forum in its order has clearly held that the computerized bill issued to the respondent/complainant made no mention of any service charges separately. It has also held that the consumer had produced the cold drink labels of MIRINDA which remained unrebutted.

6. ON the point of law, learned Counsel for the petitioner has raised the same contention which was raised before the State Commission. It has been contended

that the complaint filed by the respondent/complainant was under Section 2(1)(b) (iv) of the Consumer Protection Act, 1986 as would be evident from his narration that he has filed the same for and on behalf of numerous consumers having the same interest. It was, therefore, necessary for him to have obtained prior permission of the District Forum before filing of the complaint as mandated under Section 12(1)(c) of the Act. Further, as per Section 13(6) of the Act, the provision of Rule 8, Order 1 of the Code of Civil Procedure, 1908 was applicable and, therefore, the complaint being under Section 2(1)(b)(iv) of the Act could not be entertained without the permission of the District Forum and without following the provision of Rule 8 Order 1 of the Code of Civil Procedure. We have considered this submission, painstakingly argued by the learned Counsel for the petitioner. Suffice it to say that these very arguments were raised before the State Commission, who in its order dated 9th of January, 2006 has very elaborately discussed the same from para 7 to para 12 of its order. We are in agreement with the view expressed by the State Commission that provision of Rule 8 Order 1 of the Code of Civil Procedure applies to cases where there are large number of specified persons who can be identified and who can have their claim canvassed against other parties or defence set up against suitor, while after the amendment of the Consumer Protection Act (Act of 2002) which came into force on 15th of March, 2003, Section 14 of the Act says that if the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party to do one or more things that have been specified in Clauses (a) to (i). Clause (hb) has been introduced by the aforesaid amendment Act which reads "to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently. The State Commission has rightly distinguished the present complaint as a class action maintainable under the provisions of Section 14 of the Act and would not attract the provisions of Rule 8 Order 1 of the Code of Civil Procedure. Thus, even on the point of law, we do not find any infirmity with the order passed by the State Commission. Reliance by the learned Counsel for the petitioner on the judgment of the Hon"ble Apex Court in the case of Godfrey Phillips India Ltd. v. Ajay Kumar, II (2008) CPJ 5 (SC)=IV (2008) SLT 62=(2008) 4 SCC 504, is misplaced, inasmuch as in that case the complainant had pleaded that he was filing a petition in public interest and had made no allegation with regard to any loss suffered by him whereas in the case in hand the complainant has made out a case of unfair trade practice resulting in not only loss to him but loss to a large number of unidentifiable consumers.

7. LEARNED Counsel for the petitioner submits that amount of Rs. 6,000 has already been paid to the respondent/complainant. If that is so, the petitioner is directed to comply with the rest of the order passed by the State Commission within a period of two months from the date of receipt of the order. The revision petition is accordingly dismissed with no order as to costs.