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(1996) 09 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

P.GOSWAMI AND SONS. APPELLANT

Vs

MAHENDRA KUMAR YADAV RESPONDENT

Date of Decision : 06-09-1996

Acts Referred:

Citation : 1997 2 CPJ 359 : 1997 3 CPR 210

Hon'ble Judges : V.K.Mehrotra , Banarsi Das J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against order dated 24 February, 1993 of District Forum, Gorakhpur in Complaint Case No. 349 of 1992. The District Forum has directed the present appellant, opposite party before the District Forum, to pay to the complainant a sum of Rs. 155.50 comprising of Rs. 5.50 as excess price charged for the medicine sold by the appellant to the complainant and Rs. 150/- by way of compensation for harassment and mental agony. In addition, the appellant has been directed to pay a sum of Rs. 75/- as costs of the proceedings.

2. NO one is present before us on behalf of either party. We have looked into the case ourselves and proceed to decide it by this order. The case of the complainant was that he had purchased some medicines from the appellant on 8 October, 1992 which included an injunction of which the price was indicated on the packet as Rs. 67.50 apart from local taxes. The appellant charged a sum of Rs. 73/- from the complainant.

On receipt of notice from the District Forum, the appellant filed a written statement and both the parties filed their affidavits. The stand taken in the written statement was that the amount of Rs. 5.50 was charged towards sales-tax and surcharge and that instead of a total sum of Rs. 73.05 only a sum of Rs. 73/- was charged.

3. THE District Forum went into the evidence and felt that it was not open to the appellant as a retail dealer to have realised any amount by way of sales-tax and surcharge from the complainant. THE said amounts had already been realised by

the whole seller from whom the appellant had purchased the medicines as the point of levy for sales tax ended with the whole seller. The District Forum also found that the amount of Rs. 5.50 had been charged in excess from the complainant because in the receipt issued to the complainant the amount allegedly charged as sales tax and surcharge was not separately shown.

4. IN the detailed memorandum of appeal in which several grounds have been raised, including the ground that the District Forum was not competent to go into the question of the right of the appellant to realise the amount of sale tax and surcharge as a retailer, there is no ground suggesting that the statement contained in the order of the District Forum that the amount said to have been charged as sales-tax and surcharge had not been separately shown by the appellant was factually incorrect. Since a conclusion of fact has been recorded by the District Forum that the appellant charged Rs. 5.50 in excess of the price payable by the complainant for the medicine, which conclusion finds support from the circumstances that the realisation of this amount as sales tax and surcharge was not separately disclosed as such by the appellant, we find no reason to differ from the finding recorded by the District Forum about it. From this finding it is obvious that the District Forum cannot be faulted for directing refund of the excess amount charged as price of the medicine or for requiring the appellant to pay a token sum of Rs. 150/- by way of a compensation for harassment and mental agony which can be assumed in favour of the complainant. The question of costs is normally in the discretion of the District Forum and the amount of Rs. 75/- awarded as costs cannot be said to be arbitrary. In sum, the appeal fails and is dismissed but without any order as to costs.

5. LET copies of this order be sent to the parties by post as per rules. Appeal dismissed. ___________

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