

(2014) 07 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

PROCTER AND GAMBLE HOME PRODUCTS LTD.

APPELLANT

Vs

Taranjit Kaur

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : 2014 0 NCDRC 363 : 2014 3 CPJ 338

Hon'ble Judges : J.M.MALIK , S.M.Kantkar J.

Advocate : VIJAY KUMAR GOEL

Judgement

1. THE present Revision Petition has been filed under Section 21 (b) of the Consumer Protection Act, 1986 against the impugned order dated 16.09.2013 passed by the State Consumer Disputes Redressal Commission (in short, "State Commission ") in First Appeal No. 1841/2009, wherein the State Commission allowed the appeal and set aside the impugned order of the District Consumer Disputes Redressal Forum, (in short, "District Forum ").

2. THE brief facts relevant to decide this Revision Petition are; the complainant Ms. Taranjit Kaur used a Pantene Shampoo Pro -V, which was purchased by her father Sh. Amarjit Singh from Sh. Dharam Pal, Bansal Karyana Store the OP -3. Her hair got gamed after use and head washing. The complainant "s father took this matter to OP -3 and the distributor M/s Raj Agency, OP -1. Thereafter, the OP -1 discussed the matter officials of M/s Procter and Gamble Home Products Ltd. and offered to get the hair treated at OP -4 i.e. M/s Vandana Luthra Care Clinic(VLCC).It was further alleged that even after treatment by OP -4, the complainant "s hair could not recover nor get at its original position, hence her hair got removed. The complainant filed a complaint against the OPs alleging unfair trade practice and deficiency in service by the OPs, and sought total compensation of Rs.10,000,00/ - The District Forum, Sangrur allowed the complaint and held the OP -1/ Petitioner and the OP3/Respondent No. 3 herein jointly and severally liable to pay the complainant a sum of Rs.25,000/ - in lieu of consolidated amount of compensation.

3. THAT aggrieved by the order of District Forum, the OP -1/Petitioner filed a

First Appeal No. 1841/2009 before the State Commission and the same has been dismissed on 16.09.2013 with cost of Rs. 2000/-.

4. AGAINST the order of State Commission the OP -1 preferred this revision. We have heard the counsel for the both the parties. The counsel for complaint argued that, there was no material left in the pouch for testing, but the OP -1 could have sent similar pouches in their business establishment to prove that these are not spurious. The counsel for the Petitioner/OP -1 argued that, the complaint is not maintainable, complainant is not a "consumer", and also it has no territorial jurisdiction. He also denied the allegations in the complaint that father of the complainant had purchased the pouch of the Pantene Shampoo from shop of OP No. 3 or he refused to issue the bill. He submitted that, the damage to hair may be due to rough water, dandruff in hair. The complainant failed to handover the sachet of shampoo used by her so that same could be tested. No test was carried out as per section 13 (1) (C) of C.P. Act. It was a goodwill gesture and on humanitarian grounds the OP -1 agreed to bear one time treatment expenses at VLCC.

5. WE have requisitioned the file from District Forum and perused the evidence on record, the tuft of hair, the empty pouch of shampoo. After our thoughtful consideration we are of considered view that, that mere non -issue of bill is not sufficient to deny the liability of OPs. The sachet has already been produced by the complainant as evidence; therefore, the complainant is a consumer. Again, the complaint is within territorial jurisdiction, since the Shampoo was purchased from Dhuri and it was used by the complaint at Dhuri, which is Sub Division of Sangrur and falls within the territorial jurisdiction of Sangrur, a part of cause of action had accrued at Dhuri which is within the territorial jurisdiction.

6. THE next point is the laboratory test was not performed as per Section 13 (1) (C) of C. P. Act., that the sachet contains only 9 ml shampoo in the pouch, which was used and nothing was left in the Shampoo, hence no material could be sent for test. We are unable to understand that, as the O.P. -1 was in possession of similar pouches in his business establishment and the same could also be sent for test to prove that these are not spurious, but OP failed to do so. The Counsel for the petitioner further argued that, the sachet contains traces of shampoo material and still at this stage laboratory testing is possible. We do not find any basis for such vague argument, because the sachet of shampoo was purchased, it is beyond expiry, i.e. the expiry of which has already lapsed, 5 years ago, hence how it is not possible for correct laboratory analysis. We have perused the tuft of hair, which clearly goes to show totally damaged, discolored hair. Thus, removal of those hair certainly caused cosmetic embarrassment to the complainant who is a girl. Therefore, we are of considered view that, the OP failed to prove that why there was such extensive damage to the hair of complainant and also OP did not prove that their product was of good quality. No doubt we appreciate the goodwill gesture of the OP who was kind enough and borne the cost of one time treatment at VLCC, but this won't absolve the

petitioner from its deficiency in service. Moreover, this factor also goes to show that the OP had clandestinely admitted its liability and therefore, the question of showing goodwill gesture had cropped up in order to save its own skin. Also, in our view, it is unjust and unfair to drag the consumer up to National Commission for more than 5 years, for a meager amount of compensation of Rs.25,000/- awarded by District Forum, similar view dovetails from the Judgment of Hon "ble Supreme Court in: - GurgaonGramin Bank vs. Smt. Khazani & ANR. [Civil Appeal No. 6261 of 2012 @ Special Leave Petition (C) No. 8875/2010]. Therefore, with entirety of our discussion, we dismiss this revision petition and confirm the order of fora below. However, No order as to costs.