
(2017) 11 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Case No : 1762 of 2017

RUZAN KHAMBATTA

APPELLANT

Vs

LALIT BEAUTY CENTRE, & ANR.

RESPONDENT

Date of Decision : 20-11-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : (2017) 11 NCDRC CK 0014

Hon'ble Judges : Rekha Gupta

Advocate : P.V. RAGHUNANDAN

Judgement

1. The present revision petition has been filed against the judgment dated 31.01.2017 of the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad ("the State Commission") in First Appeal no. 1546 of 2010.

2. The facts of the case as per the petitioner/ complainant are that she had purchased a product of respondent no. 2 from respondent no. 1 L'Oreal Happy Derm Skin Exhilarating Moisturizer Cream" for her personal use. She had applied the same on her face and immediately, thereafter she suffered from severe allergic reaction. There was burning, redness and rashes. She had undergone unbearable pain and itching, due to which she has to undergo heavy medical treatment. Respondent no. 1 was informed over telephone and they offered her to pay Rs.22,000/- to Rs.25,000/-, which she refused. Due to allergic reaction, she had to cancel her trip to Singapore and her marriage proposal got postponed. She was called upon for a compromise and settlement of Rs.1.00 lakh. As the respondent did not agree she filed a consumer complaint no.326 of 2007 before the District Consumer Disputes Redressal Forum, Ahmedabad City at Ahmedabad (the District Forum") with the following prayer for a compensation of Rs.1.00lakh with interest @ 18% per annum from the date of complaint till realisation and further cost of Rs.20,000/-.

3. Respondent no.1 denied that the petitioner had purchased the L'Oreal Happy

Derm Skin Exhilarating Moisturizer Cream" for her personal use. It was evident from the copy of the cash memo filed that it cannot be ascertained from the same as to who was the purchaser and what had been bought. After receiving the complaint the respondent had requested the petitioner to undergo a skin patch test to determine the cause of the reaction as suggested by respondent no. 2. However, the petitioner refused to undergo the same. It was also denied that they have offered Rs.25,000/- as compensation at any stage. It was further stated that the petitioner had failed to produce the bill for L'Oreal Happy Derm Skin Exhilarating Moisturizer Cream", therefore, the complainant was not a consumer. The bill produced by the petitioner was not in the name of the petitioner and further the product mentioned in the said bill was of a compact powder and not a moisturising cream.

4. The District Forum vide its order dated 31.03.2010 while dismissing the complaint observed as under:

"The claim that complainant has put has to be proven and it's her responsibility. She has to prove that she bought counterpart 2 product from counterpart 1's shop. Complainer had issued page 6 with bill number 838 and it is not under the name of complainer. That bill is written may be selling and it's not under the name of complainer Ruzan Khambhata, that is clearly revealed. In addition to this, the bill's particular section has not mentioned L Oreal Happy Derm Cream Moisturizer anywhere and it does not have date or its product of L Oreal. Thus, the bill produced by complainer on page no. 6, bill 838 is not factual. Complainer also says that she had to cancel her Singapore tour and she had showed the ticket, but there is no proof that it has been cancelled. She had to present the cancelled ticket in that case. In addition she is saying that counterpart has offered Rs.22,000/- to Rs.25,000/- to prove this is her responsibility. The counterpart says that we have not made any such offer. Counterpart is saying that they asked for sample of the cream of laboratory testing but complainer did not accepted this and no sample was given and that's how complainer has just done baseless complain. As informed by us above that the bill does not have product details, name of the complainer, there is no date, there is no proof for Singapore ticket cancellation. Thus, there is no proof for anything being claimed. Complainer has bought L Oreal face cream from counterpart 1 and due to its defect she could not get married is claim for that we don't have any proof. Thus it is out polite opinion that the complainer has not given any proofs for her various claims and thus all are wrong. We strongly believed that complainer has been failed in proving it completely and these claims are just a blames. She has to present proper proofs. And as informed before, these all claims are proved wrong due to no evidence and thus the complaint has to be cancelled.

As per our above decision the complainer has been completely failed in proving her complaint so complainer is not entitled to any compensation from counterpart. Thus the complaint by complainer is being cancelled as per final order.

The complaint of complainer is being cancelled."

5. Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission, the State Commission while dismissing the appeal observed as under:

"Taking reading of the Forum's decision after hearing all parties, the bill payment of bill number 838 of litigator as been put in front of forum and it does not have purchaser's name and it does not's have bill also. In particulars sections of that bill, there is no mention of L'Oreal Happy Derm Moisturizer Face Cream". In this situation, the litigator is failing in claiming as buyer of counter part's product. Also as mentioned in the memo's page number no. 4. We got the product sample picked from your place and sent to our labs in German, as the product was not manufactured in India. The lab reports clearly states that the product conforms to all norms. The counterpart has refused to send sample of this work so the litigator has to present that e-mail. Also the cream's laboratory tests say that the cream is as per defined quality. In this situation the decision in paragraph 5 is well thought and discussed. We agree to it and it is as per legal principles and there is no need to change it. Thus considering preference of litigator we are agreeing and doing final order as below:

Appeal no. 1546 of 2010 is rejected;

Ahmedabad District Consumer Disputes Redressal Forum's complaint no. 326 of 2007 dated 31.03.2010 is continued; and

Taking details of appeal, the parties of dispute has to borne the expenditure of dispute on their own."

6. Hence, the present revision petition.

7. I have heard the learned counsel for the petitioner Mr P V Raghunandan. Today, the learned counsel for the petitioner has produced the original cash memo. It is seen from the cash memo that the bill no. 838 is for a Maybelline product and not of L'Oreal and nowhere does it mention that moisturising cream was the product purchased. In fact the cash memo mentions "camp".

8. In view of the above, I agree with the findings of lower fora that the complainant has failed to establish her allegations against respondent nos. 1 and 2 that she had bought L'Oreal Happy Derm Skin Exhilarating Moisturizer Cream", which caused her severe suffering.

9. The Hon'ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed:

"Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could

have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

10. In view of the foregoing discussion, I find no jurisdictional error or material irregularity in the impugned order which may call for interference in exercise of powers under section 21 (b) of the Consumer Protection Act, 1986. Revision petition is, therefore, dismissed with no order as to costs.