

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 9084/2017

HINDUSTAN COCA-COLA BEVERAGES PVT.LTD.

Appellant(s)

VERSUS

PURUSHOTTAM GAUR & ANR.

Respondent(s)

O R D E R

1. Heard the learned senior counsel for the appellant and perused the appeal papers.

2. The respondents, though served, have not appeared and opposed the instant appeal.

3. Having heard the learned senior counsel for the appellant, we have, at the outset, referred to the judgment passed by the District Consumers Redressal Forum, Indore, M.P. (*for short 'District Forum'*) in Case No. 410 of 2006 wherein, the District Forum, after adverting to the complaint as also the nature of the defence which was put forth and the evidence that had been tendered, including the lab report, had arrived at its conclusion that the case, as put forth by the complainant is not sustainable.

4. However, the State Commission, through its Order has directed the appellant to pay damages of Rs. 10,000/- to the respondent no.1 herein.

5. In that regard, having taken note of the manner in which the case had proceeded before the District Forum, it is seen that though, respondent no.4 in Case No. 410/2006 (respondent no.2 herein) from whom the complainant is alleged to have purchased the Fanta Bottle was arrayed as a respondent to the proceedings, the said respondent no.4 had not appeared and as such was placed *ex-parte*.

6. If that be the position, in a matter of the present nature, where the complainant had alleged that he had purchased the Fanta Bottle from respondent no.4 (respondent no.2 herein) and when the appellant herein, in their objection statement, had categorically indicated that he was not their distributor, and the distributor not being a party to the proceedings, they are unaware as to whether how the complainant has purchased the Fanta Bottle from respondent no.4 (respondent no.2 herein), we note that pursuant to the same, the complainant has not made any effort to file an appropriate application before the District Forum to summon respondent no.4 (respondent no.2 herein) to tender evidence as a witness. Hence, the purchase itself was not established.

7. In that view, when the District Forum had considered the evidence available before it and more particularly, the lab report, the conclusion to that effect reached by the District Forum was justified and the State Commission ought not to have reversed the said

finding of fact recorded without proper re-appreciation.

8. In that view, we set aside the Order passed by the State Commission and the Order passed by the National Consumer Disputes Redressal Commission (*for short 'NCDRC'*). However, taking note that the amount, as ordered, is a paltry sum and the respondent no.1 had incurred certain expenses in the course of the litigation to put an end, in the interest of justice, we direct that the said amount shall be paid to the respondent no.1, if he is available, though on merit, we have held in favour of the appellant.

9. The appeal is accordingly, disposed of along with pending application(s), if any.

.....J.
(A.S. BOPANNA)

.....J.
(DIPANKAR DATTA)

New Delhi
03rd May, 2023

ITEM NO.102

COURT NO.12

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s). 9084/2017

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Date : 03-05-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE DIPANKAR DATTAFor Appellant(s) Mr. Amit Sibal, Sr. Adv.
Mr. Rajiv Tyagi, AOR
Mr. Rahul Tyagi, Adv.
Mr. Rohit Gupta, Adv.
Mr. Sumanto Ghosh, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E RThe appeal is disposed of along with pending
application(s), if any in terms of the signed order.(NISHA KHULBEY)
SENIOR PERSONAL ASSISTANT(DIPTI KHURANA)
ASSISTANT REGISTRAR

(signed order is placed on the file)