

HIGH COURT OF GUJARAT**HINDUSTAN COCA COLA BEVERAGES PVT LTD***Versus***SONALBEN M DANGAR & 2****Date of Decision:** 11 September 2017**Citation:** 2017 LawSuit(Guj) 1175**Hon'ble Judges:** [N V Anjaria](#)**Eq. Citations:** 2017 AIR(Guj) 203**Case Type:** Special Civil Application**Case No:** 18343 of 2007**Final Decision:** Petition dismissed**Advocates:** [Nanavati Associates](#)**Cases Cited in (+): 1****N. V. Anjaria, J.**

[1] Heard learned advocate Mr. Rahil Patel for Nanavati Associates, Advocate for the petitioner. Though served with the Rule of this Court, none appeared for respondent Nos.1 to 3.

[2] This petition is directed against order dated 17.07.2017 passed by the Consumer Disputes Redressal Commission, Gujarat State, in Civil Revision Application No. 54 of 2007. The Revision Application came to be dismissed by the Commission, upholding order dated 05.07.2005 below Exh.42 passed by the Consumer Disputes Redressal Forum, Jamnagar in Complain No. 296 of 2005. Thereby, the prayer of the petitioner herein to cross-examine the original complaint was not accepted.

[3] Noticing the relevant facts, the complainant had purchased five bottles of Thums-up cold drink on 06.06.2005. Respondent No.3 issued bill and it was alleged by the complainant that the packing date printed on the bottle was 05.12.2002 and the price printed was Rs.5/-. Respondent No.3 had charged more price than what was printed. The complainant had alleged that he found dust in one of the bottles. For the deficiency in service, the case was filed before the Consumer Redressal Forum praying to award

Rs.2,00,000/- as compensation. It is in this proceedings that at particular stage, the petitioner herein moved application Exh.42 seeking to cross-examine the complainant.

[4] It was submitted before the Redressal Forum/before the Commission and now in the present proceedings before this Court that it was necessary to have the complainant cross-examined on an important aspect. It was submitted that on the bottle of the cold drink, the manufacturing date was mentioned as 05.12.2002 and the same was shown to be best before six months from the date of manufacturing. The complainant purchased the bottle in the year 2005 which however, was denied by respondent No.3 retailer. It was submitted that it was a bearing aspect and that on that the petitioner wanted to cross-examine the complainant which was denied resulting into prejudice to the petitioner.

[5] The Consumer Redressal Forum observed in its order below Exh.42 that the application seeking to cross-examine the complainant was given after intervention of long time as late as after one year and four months from the closure of the stage of arguments. The stage of arguments of the complainant was already over. The complainant filed purshis at Exh.25 on 14.03.2006 stating that he was closing his evidence. Thereafter a gap of one year and four months, application Exh.42 came to be submitted. It was rightly observed that if the petitioner was really interested in cross-examining the complainant, he would have filed the application earlier when the evidence was taken. The Commission was correct to observe that the cross-examination of the complainant, particularly at the stage at which it was sought for, was not necessary.

5.1 Furthermore, it was clearly observed by the Commission that even though cross-examination could not be permitted in the facts and circumstances of the case and having regard to the stage of the proceedings, prejudice would not occur to the petitioner because the interrogatories were permitted as per the procedure before the Consumer Forum. In such a context of reasoning, it was stated that the cross-examination could not be claimed as of right in the totality of the facts and circumstances.

[6] The above grounds mentioned by the Commission were germane and relevant. No error could be noticed when the Commission confirmed the order passed by the Forum below Exh.42. There is no gainsaying that the petitioner chose to wait till virtual completion of the entire trial proceedings before the Forum and at the stage of arguments, which too was over, the application was filed. The complainant had closed his arguments by giving purshis. Even thereafter, more than a year had passed-by when the plea for seeking cross-examination of the complainant was put-forth. As noticed above, the Commission has with relevance, discussed in its reasoning as to

how non-granting of the prayer would not result into prejudice of the petitioner and how the belated application for cross-examination was not liable to be perceived with justification. It was evident in the facts of the case that application Exh.42 was an attempt to prolong and protract the proceedings. It has to be held that the prayer for cross-examination of complainant at the stage it was made was too belated to be accepted, and meritless to be rightly rejected.

[7] No case is made out for interference in the impugned order. The petition is hereby dismissed.

Rule is discharged. Interim orders are vacated. No costs.

