

**IN THE COURT OF MUHAMMAD YOUSAF
PRESIDING OFFICER DISTRICT CONSUMER
COURT, GUJRANWALA
Case No.294/09**

Date of institution : 21-12-09.

Date of Decision : 15-09-11.

Ashiq Ali S/o Muhammad Nazir Caste Chohan R/o Street Ashiq Councilor wali
Ladhewala, Warraich, Gujranwala. (complainant)

Vs.

General Manager M/S Coca Cola(Sprite Bottle) Factory (Pvt) Ltd., Small Industries State
No.2 Near Khyaili Bypass Gujranwala. (respondent)

**COMPLAINT UNDER SECTION 25 OF THE PUNJAB CONSUMER
PROTECTION ACT, 2005.**

JUDGMENT:

1. Ashiq Ali complainant resident of Ladhewala Warraich Gujranwala has filed the instant complaint for recovery of damages to the extent of Rs.1000000/- from the respondent with the accusation that on 25-10-09 he purchased one litre bottle of Sprite brand prepared and manufactured by respondent's beverage company from a shop in his village and when he has just cleaned the bottle before serving to his family members, he was shocked to find in it a dead worm where upon he has not desealed the same. Complainant has alleged that in case of taking the unhygienic and unsafe drink by his family members, it could prove dangerous and fatal. According the complainant, respondent's company is responsible for selling and manufacturing dangerous drink. He has claimed Rs.1000000/- as damages and also has requested for taking appropriate action.

2. The complaint was resisted by the respondent and in the written reply preparation and manufacturing of said bottle has been denied by alleging that same is fake brand of sprite. Complaint was blamed, the complaint to be barred by limitation also.

3. Reconciliation proceedings remained unsuccessful whereupon parties were required to produce evidence.

4. Complainant has got recorded his own statement where in he has narrated the same facts as are mentioned in the complaint. Disputed sealed bottle was produced in the Court which was sealed and was kept in safe custody.

5. In rebuttal, there is statement of RW1 Abdul Raouf, Quality Assurance Manager of respondent's company who has deposed that in the respondent's factory, products are manufactured according to Pakistan as well as International standard and because of installation / use of high standard machinery, presence of foreign body in the manufactured bottle is impossible. He has further deposed that there are not only internal checks but also other department made inspection in this regard. On documentary side, besides copies of FIRs got longed against the official of respondent's company for sale of fake bottles of its brand, ISO certificates have been placed on record.

6. During cross examination said RW has admitted that there is a authorized dealer of respondent's company in village Ladhewala Warraich who used to supply the drink prepared by respondent's company to other shopkeepers. He has also not denied that the disputed bottle bears trade mark of respondent's company.

7. Contention of learned counsel for the complainant while referring the cross examination of RW1 is that as trade mark of respondent's upon the disputed bottle has not been denied, so the manufacturing of the said unhygienic and unsafe bottle by respondent's company as he has been alleged by the complainant is being proved. Further contends that as FIR has not been got lodged against authorized dealer located at Ladhewala Warraich or any other shopkeeper on the allegation of sale of fake bottle, so sealed disputed bottle will be considered as prepare by respondent's company.

8. Conversely, arguments advanced are that because of installation of automatic plant and keeping of high standard of sanitary condition, there is no possibility of entering of any dead worm in the bottle prepared at respondent's company in plant, so that disputed sealed bottle is not the product of respondent's company. Regarding the limitation, it has been argued that as admittedly complaint has purchased bottle on 25-10-09, so a complaint in this regard could be filed till 25-11-09 and the instant complaint filed on 21-12-09 is hopelessly time barred.

9. In light of arguments record has been careful perused.

10. Instant complaint has been filed with the accusation that respondent's company has prepared unhygienic and unsafe product, as on purchase of one litre bottle of sprite admitted brand of respondent's company, a dead worm was found inside. To prove the same, complaint has got recorded his own statement and also produced a sealed bottle. Presence of dead bee is visible through nacked eye and as such laboratory test was not required. On behalf of respondent presence of above said dead bee has not been denied. However, manufacturing of same by respondent's company has been disputed and to prove the same, the statement of RW1 had been got recorded who is Quality Assurance Manager. Although he has given the details of manufacturing process and

quality control checks internal as well as external but during cross examination, he has admitted that upon the disputed bottle respondent's company trade mark is printed. Much emphasis was laid from respondent side upon in arguments that fake bottle are prepared and sold in local market with the trade mark of respondent's company and machinery of law is set into motion by longed the FIR, copies of FIR have also been placed on record but those are not sufficient proof to declared the disputed bottle as fake one for the reason the inspite of filing of present complaint no action was got initiated against culprits. Even no proof has been made available regarding cancellation of dealership of authorized dealer of Ladhewala Warraich. As such respondent's version can not be accepted. It is unquestioned right of a Consumer that he should be provided safe and sound food, disputed bottle because of availability of dead bee inside is not meeting with above said requirement as it is not safe for human consumption.

11. As far as objection regarding limitation is concerned, undeniably disputed bottle was purchased on 25-10-09, complainant before expiry of 30 days period, has got issued a legal notice on 21-11-09 as has been admitted in the reply dated 10-12-09 of which Photostat is available on the record. Since the reply of legal notice was not submitted within 15 days, so filing of complaint within 30 days was not be possible. As such the period in this regard is extended and objection of respondent is rejected.

12. In view of what has been stated above, as allegation of preparation of unhygienic and unsafe product is being established, so, under section 32 of Punjab Consumer Protection Act, 2005 fine of Rs.25000/- is imposed to the respondent's company which shall be deposited in treasury within 30 days of announcement of this judgment and Rs.10000/- are awarded to the complainant as litigation charges which shall be paid to the complainant by the respondent within 30 days of passing of this judgment besides price of defective bottle. Although complainant has claimed Rs.1000000/- as damages but same could not be granted as actually he has suffered no loss, as undeniably bottle was not used. The Registrar of this Court is directed to keep the disputed bottle in his save custody till the expiry of appeal. File be consigned to record room after is due completion.

Announced:
15-09-11

(MUHAMMAD YOUSAF)
Presiding Officer
District Consumer Court,
Gujranwala.

Certified that this judgment is consisting of three pages, which have been dictated corrected and signed by me.
15-09-11

(MUHAMMAD YOUSAF)
Presiding Officer
District Consumer Court,
Gujranwala.

