

to pay the compensation of Rs.10,000/-. The facts giving rise to this appeal may be enumerated as below:-

The complainant Sri Mohan Babu Agarwal had filed his complaint with the allegations that he had purchased a bottle of Septran Syrup from M/s Krishna Medicos Fountain, Agra and when he was about to open the cork of the bottle he saw some insects inside. The complainant brought that bottle to his counsel Sri S.K. Srivastava who had drafted a notice and dispatched it to the Secretary and Chairman of the manufacturing company "Burroughs Welcome (India) Limited" Bombay. The complainant also obtained a laboratory report and the analyst submitted his opinion that the contents of the bottle were not fit for human consumption.

The opposite parties contested the complaint with the allegation that M/s Krishna Medicos Fountain from whom the complainant had allegedly purchased the medicine were wholesale stockist of the manufacturing company.

The complainant then got his complaint amended and pleaded by virtue of the amended plea that he had purchased the medicine from M/s R.K. Medical Hall, a retailer of M/s Krishna Medicos Fountain and since the wholesaler and the retailer both medical centers were owned by the same family they were liable to pay the compensation.

Obviously in the above situation the evidence regarding purchase of medicine had become significant. The complainant was asked to produce the receipt of payment which might have been issued to him either by M/s Krishna Medicos Fountain or M/s R.K. Medical Hall but the complainant failed to bring on record either any receipt or any other proof of payment. This infirmity of the complainant's case had demolished the very edifice of his version. Indeed, in the absence of the receipt or bill of payment the complainant could not be believed to have purchased the contaminated bottle of medicine from either of the two medical centers. Oral statement would not meet the requirement of a positive proof.

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Then amended version also caused a serious blow to the complainant's plea of the medicine having been purchased from M/s Krishna Medicos Fountain and impliedly ruled out its purchase from there. The theory of bottle-purchase from R.K. Medical Hall was an after thought idea. The third set back the complainant might have suffered came out of his failure to have produced the bottle in question before the Forum below. He had not sought the District Consumer Forum's permission to obtain an expert's opinion after submitting the bottle in question to the members of the Forum below. Then another infirmity found with the expert's opinion was that he could not mention as to whether the bottle received by him had a sealed cork or the cork had already been broken before it was received in the laboratory.

We therefore, find that there was no connectivity or nexus between the bottle and M/s Burroughs Welcome (India) Limited. The said manufacturing company therefore, cannot be held responsible nor the stockist thereof. What more important to note is that the complainant who sent his memorandum of appeal by post could not enclose with it any documentary evidence supporting his averment of the medicine having been purchased from manufacturing company's stockist or dealer. He has referred some purchase voucher in para 2 of his memorandum of appeal but it was neither filed before the District Consumer Forum nor it has been submitted before this Commission. Since the very fact of the medicine being purchased from an authorized dealer has not been established beyond doubt it would be futile to enter into the issue of septran syrup being manufactured in two groups – one for adults and the other for children. In para 14 of the memo of appeal the appellant has stated that he had shown the bottle to one of the Members of the District Consumer Forum but this is not supported by the order on the order sheet which might have been passed by the concerned member. Moreover, one member does not constitute a district consumer forum. We are therefore, not inclined to accept it. The forwarding note of the Drug Controller dispatched to the Government Analyst in the absence of the cogent evidence to support the complainant's version would be of no avail as the Drug Controller has neither certified purchase of the medicine from

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either of the two medical centers nor he could have said without an authentic certificate that the medicine was manufactured by M/s Burroughs Welcome (India) Limited.

For the reasons disclosed above, we find no merit in this appeal. Accordingly, it is dismissed.

Bhanwar Singh
(JUSTICE BHANWAR SINGH)
PRESIDENT

SA
(SYED ALI AZHAR RIZVI)
MEMBER

RPS
(RAM PAL SINGH)
MEMBER

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