

Today Merchandise Pvt. Ltd. vs Anil Kumar Luthra on 8 January, 2020

Bench: D.Y. Chandrachud, Hrishikesh Roy

CA 802020

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 80 of 2020
(Arising out of SLP (C) No 7557 of 2019)

Today Merchandise Pvt Ltd & Another

Versus

Anil Kumar Luthra

JUDGMENT

Dr. Dhananjaya Y Chandrachud, J 1 Leave granted.

2 This appeal arises from a judgment of the National Consumer Disputes Redressal Commission¹ dated 28 November 2018 in the course of its revisional jurisdiction. The appellant advertised a holiday voucher scheme through its website. In September 2012, an employee of the appellant communicated the scheme to the respondent who expressed his willingness to purchase holiday scheme vouchers. The terms on which the vouchers were available were indicated on the website of the appellant. The scheme envisaged that “free gifts” would be made available to the purchaser against further referrals. The 1NCDRC CA 802020 gifts were contingent on the number of referrals made by the subscriber. The relevant part of the scheme is reproduced below:

“ No of Referral Gift 2 UCB Wrist Watch 3 UCB Sunglasses 6 I Ball Mobile 8 Kodak Digital Camera 10 Kodak Digital Camera + I-Pod 15 Blackberry Curve 8520 20 HCL/Dell Mini Laptop “

3 The respondent purchased three vouchers each of Rs 5998 and thus paid a total sum of Rs 17,994. On 18 September 2012, the appellant addressed an e-mail to the respondent specifically advertng to the referral scheme. The respondent was informed that, by making referrals of his ‘friends and

associates', he could avail of the gifts which were on offer, in the terms noted above.

4 The respondent moved the District Consumer Redressal Forum 2, Sikar claiming that he was entitled to three free gifts, namely, (i) a lap top; (ii) a mobile phone; and (iii) a 42" LED television. The District Forum allowed the claim. The order of the District Forum was confirmed by the State Consumer Disputes Redressal Forum³ and in revision by the NCDRC. Monetary compensation has also been awarded in the amount of Rs 5,000 for mental torture, together with costs of Rs 2000.

2 District Forum 3SCDRC CA 802020 5 Mr Manish Goswami, learned counsel appearing on behalf of the appellant submitted that the offer which was made by the appellant for free gifts to a subscriber was conditional on referrals. The respondent did not make any referrals. Moreover, it was urged that the order of the District Forum would result in a manifest absurdity since in terms of its direction, a subscriber who had paid an amount of Rs 17,994, would be entitled to a cell phone, a lap top and a television set of a value far in excess of the amount which has been contributed. Learned counsel also urged that the appellant had a serious objection to the jurisdiction of the District Forum. 6 On the other hand, it was urged by Mr Shivam Sharma, learned counsel on behalf of the respondent that the e-mail dated 18 September 2012 which has been produced in the counter affidavit was not a part of the record of the District Forum. It was urged that an employee of the appellant had, in fact, made a representation to the respondent assuring that free gifts would be handed over. Learned counsel urged that as a consequence of the dispute, the services of the employee were terminated which goes to establish the case of the respondent that such a representation was indeed made. 7 Under the scheme which was propagated by the appellant, the "free gifts" were contingent on the subscriber making referrals. Though the learned counsel appearing on behalf of the respondent submitted that the e-mail dated 18 September 2012 was not a part of the record of the District Forum, learned counsel appearing on behalf of the appellant has controverted this by advertizing CA 802020 to the reply filed on behalf of the appellant before the District Forum in which there is a clear reference to the e-mail. Significantly, the e-mail is of 18 September 2012, a day after the respondent is alleged to have received a communication from the representative of the appellant. Both from the scheme as well as from the e-mail dated 18 September 2012, it is evident that a subscriber was not entitled, as a matter of right, to the "free gifts" merely on purchasing the holiday vouchers. The free gifts were contingent upon making referrals which, admittedly, were not made by the respondent. The directions of the District Forum, which were affirmed by the SCDRC and NCDRC will result in a manifestly absurd outcome. The order of the District Forum was manifestly contrary to the terms of the agreement between the parties. Both the SCDRC and the NCDRC have erred in confirming the order of the District Forum. 8 We accordingly allow the appeal and set aside the impugned judgment and order of the NCDRC dated 28 November 2018. The complaint filed by the respondent shall accordingly stand dismissed. There shall be no order as to costs.

.....J. [Dr Dhananjaya Y Chandrachud]
.....J. [Hrishikesh Roy] New Delhi;

January 08, 2020
CA 802020

ITEM NO.35

COURT NO.8

SECTION XVII-A

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

TODAY MERCHANDISE PVT LTD & ANR.

Appellant(s)

VERSUS

ANIL KUMAR LUTHRA

Respondent(s)

Date : 08-01-2020 This appeal was called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE
HRISHIKESH ROY For Appellant(s) Mr. Manish Goswami, Adv.

Mr. Rameshwar Prasad Goyal, AOR For Respondent(s) Mr. Shivam Sharma, Adv.

Mr. Rishi Kapoor, Adv. Mr. Ankur Gogia, Adv. Ms. Manju Jetley, AOR UPON hearing
the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

(Chetan Kumar)
A.R. - cum - P.S.

(Saroj Kumari Gaur)
Court Master

(Signed reportable judgment is placed on the file)