P. C. CHERIYAN

v.

BARFI DEVI

October 16, 1979

[R. S. SARKARIA AND O. CHINNAPPA REDDY, JJ.]

Transfer of Property Act 1882 (4 *of* 1882) *S.* 106—*Lease of Premises for carrying on business of retreading of tyres—Whether lease for 'manufacturing purposes' within S.* 106.

Words and Phrases—'Manufacturing purposes'—Meaning of—Transfer of Property Act 1882, *S.* 106.

The plaintiff (respondent) let out the accommodation in dispute at a rent of Rs. 850/- per annum to the defendant (appellant) who was doing the business of retreading of tyres in the said premises. The defendant defaulted in payment of rent, and the plaintiff sent one month's notice terminating the tenancy. Thereafter, the plaintiff instituted a suit for recovery of arrears of rent and ejectment against the defendant.

The suit was contested, on the ground that the premises in dispute had been let out for manufacturing purposes and in view of s. 106, Transfer of Property Act, the lease could be terminated by the landlady only by six months notice expiring with the end of the year of tenancy and since the plaintiff had served only 30 days' notice, the same was invalid and ineffective to terminate the tenancy.

The Trial Court and the First Appellate Court concurrently decreed the suit for arrears of rent as well as for ejectment which was confirmed by the High Court. All the Courts below held that the retreading of tyres, is not a 'manufacturing purpose' and, therefore, 30 days' notice given by the plaintiff to the defendant for terminating his tenancy was valid.

In the defendant's appeal to this Court on the question whether a lease of a premises for carrying on the business of retreading of tyres is a lease for 'manufacturing purposes' within the contemplation of s. 186 Transfer of Property Act.

HELD: 1. The Courts below were right in holding that the lease in the present case was not for 'manufacturing purposes', and the tenancy had been rightly terminated by thirty days' notice. [966 H]

2. The expression 'manufacturing purposes' has not been defined in the Transfer of Property Act. It has therefore, to be construed in its popular sense. 'Manufacture' implies a change but every change is not manufacture. Something more is necessary. There must be transformation; a new and different article must emerge having a distinctive name, character or use. [964 A-B]

3. The broad test for determining whether a process is a manufacturing process, is whether it brings out a complete transformation for the old components,

so as to produce a commercially different article or commodity. This question is largely one of fact. [966 F]

As a result of retreading, an old tyre does not become a different entity, nor acquires a new identity. The retreading process does not cause the old tyre to lose its original character, nor brings into being a commercially distinct or different entity. The old tyre retains its basic structure, original character and identity, as a tyre, although retreading improves its performance and serviceability. Retreading of old tyres is just like resoling of old shoes. Just as resoling of old shoes does not produce a commercially different entity, so from retreading no new or distinct article emerges. [966 E-G]

4. Definitions of 'manufacture' given in other enactments, such as, in the Factories Act or the Excise Act should not be blindly applied while interpreting the expression 'manufacturing purposes' in s. 106 of the Transfer of Property Act, because in some other enactments such as the Excise Act, the term 'manufacture' has been given an extended meaning by including in it 'repairs', also. [967 A-B]

South Bihar Sugar Mills v. *Union of India*, [1968] 3 SCR 21, referred to.

Federal Commissioner of Taxation v. *Jack Zinader Proprietary Ltd.*, (1948-49) 78 C.L.R. 336; distinguished.

Allenbury Engineers Ltd. v. *Ramakrishna Dalmia and Ors.*, [1973] 2 S.C.R. 257; applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1722 of 1969.

Appeal by Special Leave from the Judgment and Order dated 11-12-1968 of the Allahabad High Court in Second Appeal No. 969/67.

M. M. Abdul Khader, R. Satis, Vijay K. Pandita and *E. C. Agarwala* for the Appellant.

Jitendra Sharma and *V. P. Chaudhary* for the Respondent.

The Judgment of the Court was delivered by

SARKARIA, J.—Whether a lease of a premises for carrying on the business of retreading of tyres is a lease for "manufacturing purposes" within the contemplation of Section 106, Transfer of Property Act, is the only question that falls for consideration in this appeal by special leave directed against a judgment, dated December 11, 1968, of the High Court of Allahabad. The question arises in these circumstances :

The plaintiff-respondent let out the accommodation in dispute, at a rent of Rs. 850/- per annum to the defendant who was doing the business of retreading of tyres in the said premises. The defendant defaulted in payment of rent. The plaintiff, therefore, sent one

month's notice to the defendant terminating his tenancy. Thereafter, the plaintiff instituted a suit for recovery of arrears of rent and ejectment against the defendant. A

The suit was resisted, *inter alia,* on the ground that the premises in dispute had been let out to him for manufacturing purposes and in view of Section 106, Transfer of Property Act, therefore, the lease could be terminated by the landlady only by six months' notice expiring with the end of the year of tenancy, and since the plaintiff had served only 30 days' notice, the same was invalid and ineffective to terminate the tenancy. B

The trial Court and the First Appellate Court concurrently decreed the suit for arrears of rent as well as for ejectment. C

The only ground urged before the First Appellate Court and the High Court was that the tenancy being for manufacturing purposes, could not be terminated by one month's notice. All the courts below negatived this contention and have concurrently held that the retreading of tyres, is not a manufacturing purpose and, therefore, 30 days' notice given by the plaintiff to the defendant for terminating his tenancy, was valid. D

Mr. Khader, learned counsel for the defendant-appellant, contends that the process of retreading old tyres, involves the use of sophisticated machinery and results in bringing into being a distinct commercial commodity. It is argued that the essential test of a manufacturing process is that it must bring about a change in the character, quality or user of the old material processed so as to produce a distinct marketable article, but it is not necessary that the old material should completely lose its identity. It is urged that the High Court was in error in taking the view that from the process of retreading old tyres a commercially different article does not emerge. In support of the proposition that a process by which a useless article becomes useful and its character or use is changed is a manufacturing process, counsel has cited *Commissioner of Sales Tax, U.P.* v. *Dr. Sukh Deo;*(1) *Allenburry Engineers Pvt. Ltd.* v. *Ramakrishna Dalamia & Ors.;*(2) *State of Maharashtra* v. *The Central Provinces Manganese Ore Co. Ltd.;*(3) *North Bengal Stores Ltd.* v. *Member, Board of Revenue, Bengal;*(4) and an Australian case; *Federal Commissioner of Taxation* v. *Jack Zinader Proprietary Ltd.*(5). E F G

(1) [1969] 1 S.C.R. 710.
(2) [1973] 2 S.C.R. 257.
(3) [1977] 1 S.C.R. 1002.
(4) (1938—50) 1 STC 157.
(5) (1948-49) 78 C.L.R. 336. H

A The expression "manufacturing purposes" has not been defined in the Transfer of Property Act. It has therefore, to be construed in its popular sense. According to the Permanent Edition of Words and Phrases, Vol. 26, 'manufacture' implies a change but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary B and there must be transformation; a new and different article must emerge having a distinctive name, character or use. This construction of the expression "manufacture" received the imprimatur of this Court in *South Bihar Sugar Mills* v. *Union of India.*(1) But the case directly in point is *Allenburry Engineers Ltd.* v. *Ramakrishna Dalamia,* C ibid; wherein the question for consideration before this Court was whether the lease in favour of *Allenbury Engineers* was for "manufacturing purposes" within the meaning of Section 106, Transfer of Property Act. On the facts of that case, answering the question in the negative, this Court held that even though the lessees were manufacturing some spare parts for repairing or reconditioning vehicles, yet D the dominant purpose of the lease was one of the storage and resale of the vehicles after repairing and reconditioning them; and that manufacturing of spare parts was merely incidental to the main purpose of repairing or reconditioning the vehicles for disposal.

Since the instant case is covered by the ratio of *Allenbury Engi-* E *neers,* it is not necessary to discuss all the cases cited by Mr. Khader. Nevertheless, it will be proper to notice briefly one case, namely, *Federal Commissioner of Taxation* v. *Jack Zinader Proprietary Ltd,* ibid; on which the counsel has staked a good deal in his argument.

In *Jack Zinader* (ibid), a furrier company received from customers F fur garments which had become too badly worn and damaged to be repaired, and, after removing the defective parts, remodelled, for those customers respectively by various processes, what was left into modern styles of coats, fur capes, fur collars, fur coats and stoles having regard to the extent, shape and nature of the available materials. The materials used by the company in remodelling were, except about five G per cent of the linings, confined to those available from the customer's garment. If new linings were required the customer supplied them. The question for decision before the High Court of Australia was whether fur coats, stoles, capes and collars formed by remodelling fur garments are for the purposes of the Sales Tax Assessment Act (No. 1), 1930-1942, goods "manufactured sold". The Court by a majority H consisting of Dixon and Williams JJ. (Web J. dissenting) answered

(1) [1968] 3 S.C.R. 21.

this question in the affirmative. Dixon J. in his leading judgment (at p. 343), after quoting with approval the dictum of Darling J. in *McNicol* v. *Pinch*,(1) that "the essence of making or of manufacturing is that what is made shall be a different thing from that out of which it is made", observed :

> "The first and, it may be thought, the decisive question in the case, is therefore whether the garments which result from the process of remodelling are different things, that is are different goods, from the garments that the customer hands over. This perhaps is rather a question of fact than of law.....The Commissioner distinguishes between repair and remodelling and does not claim sales tax in respect of repair even although it may mean some change in, for example, the length of the garment. We are told that an old or worn fur coat is remodelled into a modern style of coat, that a fur necklet is remodelled into a stole and a fur necklet or fur stole is remodelled into a cape. A full length fur coat may be converted into a saunter' or the somewhat similar 'swagger' coats which are considerably shorter but full and often flared at the bottom. But the conversion may be to a jacket, which is coatee, which is less than waist length and fits more closely and usually is not fastened in front....."
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> "On the side of the taxpayer it is contended that these procedures do not change the identity of the garment but only some of its characteristics. The customer hands in a fur garment and takes away a fur garment. It is altered and renovated but it is still a fur garment; it is her fur garment; it is the fur garment she brought to the furriers. On the side of the Commissioner it is said that a different fur garment has been brought into existence. The old fur garment has been used only to provide the materials or some of them from which the new fur garment has been made. It is a thing of a different description both commercially and from the point of view of the wearer. It is a different entity and has a new identity. Goods have therefore been produced.
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> "On the whole, the Commissioner's view appears to be the more correct. The work of the furrier is to use skins to form garments. Fashion, commercial usage and his cus-

(1) [1906] 2 K.B. 352 at p. 361.

A tomer's tastes combine to distinguish the various descriptions of garment he makes and to compel the recognization of them as separate categories of goods. When he takes skins made up into the description of fur garment and produces another, he cannot be treated as having altered an existing thing without producing a new one. He has made a B different article."

Williams J., agreed with Dixon J., that the question at issue was one of fact and degree and that the process concerned involved manufacture of goods into different goods from their second-hand components. The learned Judge rejected the argument on behalf of the C taxpayers that the work could be described as a mere repair or modification of the goods which did not affect their original character, with the observation that "once the work done causes the goods to lose this character they become 'goods' within the meaning of the Act."

It will be seen that *Jack Zinader's* case bears no analogy with the D present case. The facts of that case were materially different. There, from the serviceable components taken out from old garments, the furrier by his skill and labour made garments of different design and description both commercially and from the point of view of the wearer. But in the instant case, by retreading an old tyre does not become a different entity, nor acquires a new identity. The E retreading process does not cause the old tyre to lose its original character. The broad test for determining whether a process is a manufacturing process, is whether it brings out a complete transformation for the old components so as to produce a commercially different article or commodity. This question as rightly emphasised by the learned Judge in *Jack Zinader,* is largely one of fact. In the F case before us, all the courts below have concurrently answered this question in the negative. In our opinion, this finding of the courts below is unassailable. The retreading of old tyres does not bring into being a commercially distinct or different entity. The old tyre retains its original character, or identity as a tyre. Retreading does not com- G letely transform it into another commercial article, although it improve its performance and serviceability as a tyre. Retreading of old tyres is just like resoling of old shoes. Just as resoling of old shoes, does not produce a commercially different entity having a different identity, so from retreading no new or distinct article emerges. The old tyre retains its basic structure and identity. The courts below H were therefore, right in holding that the lease in the present case was not for manufacturing purposes, and the tenancy had been rightly terminated by thirty days notice.

Before parting with this judgment, we may sound a note of caution, that definitions of "manufacture" given in other enactments, such as, in the Factories Act or the Excise Act should not be blindly applied while interpreting the expression "manufacturing purposes" in Section 106, of the Transfer of Property Act. In some enactments, for instance in the Excise Act, the term "manufacture" has been given an extended meaning by including in it "repairs", also. A B

For the foregoing reasons, the appeal fails and is dismissed with costs.

N.V.K. *Appeal dismissed.*