

P. C. Cheriyan

Vs

Mst. Barfi Devi

Civil Appeal No. 1722 of 1969

(R.S. Sarkar, O. Chinnappa Reddy JJ)

16.10.1979

JUDGMENT

Sarkaria, J. –

1. 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.

1-A. 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 ejection against the defendant.

2. 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.

3. The trial Court and the first appellate Court concurrently decreed the suit for arrears of rent as well as for ejection.

4. The only ground urged before the first appellate Court and the High Court was that the tenancy being for manufacturing purpose, could not be terminated by one month's notice. All the courts below negative 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.

5. Mr. Khadar, 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 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 *CST v. Dr. Sukh Deo* ((1969) 1 SCR 710 : AIR 1969 SC 499 : (1969) 23 STC 385), *Allenbury Engineers Pvt. Ltd. v. Ramakrishna Dalmia* ((1973) 2 SCR 257 : (1973) 1 SCC 7), *State of Maharashtra v. Central Provinces Manganese Ore Co. Ltd.* ((1977) 1 SCR 1002 : (1977) 1 SCC 643 : 1977 SCC (Tax) 211), *North Bengal Stores Ltd. v. Member, Board of Revenue, Bengal* ((1938-50) 1 STC 157 (Cal HC)) and an Australian case : *Federal Commissioner of Taxation v. Jack Zinader Proprietary Ltd.* ((1948-49) 78 CLR 336).

6. 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 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 imprimature of this Court in *South Bihar Sugar Mills v. Union of India* ((1968) 3 SCR 21 : AIR 1968 SC 922 : (1968) 2 SCJ 433). But the case of directly in point is *Allenbury Engineers Ltd. v. Ramakrishna Dalmia* ((1973) 2 SCR 257 : (1977) 1 SCC 7), 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 the dominant purpose of the lease was one of 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.

7. Since the instant case is covered by the ratio of *Allenbury Engineers* ((1973) 2 SCR 257 : (1977) 1 SCC 7), it is not necessary to discuss all the cases cited by Mr. Khadar. Nevertheless, it will be proper to notice briefly one case, namely, *Federal Commissioner of Taxation v. Jack Zinader Proprietary Ltd.* ((1948-49) 78 CLR 336), on which the counsel has staked a good deal in his arguments.

8. In *Jack Zinader* ((1948-49) 78 CLR 336), a furrier company received from customers 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 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 all majority consisting of Dixon and Williams, JJ. (Web, J. dissenting) answered 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* ((1906) 2 KB 352, 361 : 95 LT 530), that "the essence of making or of manufacturing is that what is made shall be 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 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

On the side of the tax payer 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.

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. Fashions, commercial usage and his customer's tastes combine to distinguish the various descriptions of garment he makes and to compel the recognition 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 different article.

9. 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 record-hand components. The learned Judge rejected the arguments on behalf of the tax payers 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".

10. It will be seen that Jack Zinader case ((1948-49) 78 CLR 336) bears no analogy with the 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 it 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. 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 Judges in Jack Zinader ((1948-49) 78 CLR 336) is largely one of fact. In the 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 completely transform it into another commercial article, although it improves 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 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.

11. 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 expressions "manufacturing purpose" 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.

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

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