

Idandas

Vs

Anant Ramchandra Phadke (dead) by Lrs

Civil Appeal No. 2383 of 1977

(Syed M. Fazal Ali, R.B. Misra JJ)

20.11.1981

### JUDGMENT

1. This appeal by special leave is directed against the judgment of the High Court of Bombay dated December 24, 1975 (sic).

2. The short point of law involved in this case is whether the lease in question granted by the landlord to the appellant-tenant was a lease for manufacturing purposes. In case the lease was for a purpose of manufacture then it is manifest that under Section 106 of the Transfer of Property Act the lease could be terminated only by giving six months' notice.

3. The suit was contested by the defendant-tenant. The plaintiff case was that the tenancy was from month to month and, therefore, a month's notice to terminate the tenancy was sufficient and the provision under Section 106 of the Transfer of Property Act was not attracted. The plaintiff also denied that the lease was for a manufacturing purpose. The High Court upheld the judgment of the District Judge holding that the lease was not for a manufacturing purpose and held that the tenancy was rightly terminated as the notice was valid.

4. Mr. Gobind Ram Bhatia, learned counsel for the appellant-tenant, has submitted a short point of law before us. He submits that having regard to the process of manufacturing carried on by the defendant, there can be no doubt that the lease was for a manufacturing purpose and could be terminated only by six months' notice under Section 106 of the Transfer of Property Act. Notice was issued to the respondents. That notice was duly served on them. There is a certificate given by the High Court of Bombay itself that the notice on the respondents was served. Nobody has appeared for the respondents to contest this appeal.

5. In the present case, the admitted facts are as under :

1. That to begin with the lease was given to the defendant in respect of an open piece of land; 2. That on the open piece of land the appellant installed a flour mill and that the defendant was not using the land for any other purpose except running a flour mill; 3. That the receipts filed by the tenant clearly show that the lease was doubtless a yearly one.

6. Reliance was placed by the District Judge on the counterfoils where the plaintiff-landlord tried to make out a case of monthly tenancy but the entry in the counterfoil being an admission in his own favour was not admissible against the appellant. On the other hand, the trial court has pointed out in its judgment that the receipts produced by the tenant clearly show that the rent used to be paid from

year to year. Exhibits 24 to 26 pertained to the rent paid on an yearly basis right from 1959 to May 31, 1961. On point of fact, therefore, we are satisfied that in the instant case the lease was from year to year and, therefore, a month's notice was not legal if the lease was for a manufacturing purpose.

7. The second point which arises for decision is as to the purpose of the lease. This point is no longer *res integra* and is concluded by a clear authority of this Court in *Allenbury Engineers Pvt. Ltd. v. Ramkrishna Dalmia* in Section 106 of the Transfer of Property Act must be used in its popular and dictionary meaning as the statute has not defined the words "manufacturing purposes". We might state that in the present set up of our socialistic pattern of society when our country has made strong strides in various spheres of industrial activities an industrial venture must be given the most liberal interpretation so as to subserve the object of the statute. Of course the burden of proving whether the purpose of the lease was a manufacturing purpose would be on the defendant but we are satisfied that the defendant in this case has amply discharged its onus. In the aforesaid case this Court observed as follows : (SCC pp. 10-11, para 8).

The word "manufacture", according to its dictionary meaning, is the making of articles or material (now on large scale) by physical labour or mechanical power. (Shorter Oxford English Dictionary, Vol. I, p. 1203). 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.

8. In coming to this conclusion this Court relied on two of its earlier decisions in *South Bihar Sugar Mills Ltd. v. Union of India* and *Union of India v. Delhi Cloth & General Mills*. Even before the decision of this Court, B. K. Mukherjee, J. (as he then was) who was later elevated to the Bench of this Court and retired as Chief Justice of India observed in *Joyanti Hosiery Mills v. Upendra Chandra Das* as follows :

To manufacture, according to its Dictionary meaning, means "to work up materials into forms suitable for use". The word "material" does not necessarily mean the original raw material, for a finished article may have to go through several manufacturing processes before it is fit.

1. (1973) 2 SCR 257 : (1973) 1 SCC 7 : AIR 1973 SC 425 2. (1968) 3 SCR 21 : AIR 1968 SC 922 3. 1963 Supp 1 SCR 586 : AIR 1963 SC 791 4. AIR 1946 Cal 317 : 50 CWN 441

and made ready for the market. What is itself a manufactured commodity may constitute a "material" for working it up into a different product. Thus, for example, for the tanner, the material would be the raw hide, but the leather itself a manufactured article would constitute the material for the shoemaker's business, and we cannot say that the shoemakers are not manufacturers because they do not work on raw hides.

9. In the case of *John Augustine Peter Mirande v. N. Datha Naik* the Mysore High Court following the Calcutta decision held that the lease in that case, which was a case of saw mill, was for manufacturing purposes. We might observe that so far as the present case is concerned, where the

mill is a flour mill, it stands higher than the facts of the case in Mysore case. AIR 1971 Mys 365 : (1971) 2 Mys LJ 204.

10. Coming now to the tests laid down by this Court the position may be summarised as follows :

1. That it must be proved that a certain commodity was produced; 2. That the process of production must involve either labour or machinery; 3. That the end product which comes into existence after the manufacturing process is complete, should have a different name and should be put to a different use. In other words, the commodity should be so transformed so as to lose its original character.

11. In the instant case what happened was that wheat was transformed, by the manufacturing process which involved both labour and machinery, into flour. The commodity before manufacture was wheat which could not be consumed by any human being but would be used only for cattles or medicine or other similar purposes. The end product would be flour which was fit for human consumption and is used by all persons and its complexion has been completely changed. The name of the commodity after the product came into existence is atta and not gehun (wheat). Thus in the instant case all the three tests have been fully satisfied. This being the position the irresistible inference and the inescapable conclusion would be that the present lease was one for manufacturing purposes. In this view of the matter, the notice of one month must be held to be invalid and suit for ejection should have failed on that ground.

12. We, therefore, allow this appeal, set aside the judgment of the High Court and dismiss the plaintiffs suit. Before concluding we would like to add with due respect, that the judgment of the High Court is not very satisfactory as it has not made any real attempt to apply its mind to the substantial question of law that was involved in the case and seems to have rushed to its conclusions even without considering the authorities on the subject particularly the one referred to in the judgment as also the authoritative decision of this Court referred to above which was pronounced five years before the judgment of the High Court was given. From such a prestigious High Court as Bombay we do expect a more careful and cautious approach in a matter like this. As the respondents have not appeared before us, we make no order as to costs in this Court. The appellant will certainly be entitled to costs in the courts below.

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