

CALCUTTA HIGH COURT

Sati Prasanna Mukherjee

Vs.

Md. Fazel

Civil Suit No. 1225 of 1948

(P.B. Mukharji, J.)

04.01.1950

JUDGMENT

P.B. Mukharji, J.

1. This is a suit for the recovery of premises No. 47A, Ripon Street, Calcutta, on the ground that the plffs. *bona fide* require the said premises for their own use and occupation and for the purpose of building and re-building.

2. The defense taken in the written statement is two-fold : one is that the lease was for manufacturing purposes, and the other is a denial of the *bona fide* requirement of the plffs. upon the grounds mentioned in the plaint.

3. Mr. Modak, learned junior of Mr. Meyer, raised two issues as follows :

1. Was the lease for manufacturing purposes?
2. Do the plffs. require the premises *bona fide* -
 - (a) for their own use and occupation;
 - (b) for building and re-building?

These issues have been accepted by Mr. S. K. Basu appearing for the plffs.

4. Evidence has been adduced on behalf of the plffs. The first witness was Uma Prasanna Mukherji, the son of Plaintiff 1 Sati Prasanna Mukherji; and the next witness was the Plaintiff Debi Prasanna Mukherji, and the third witness was Sachin Bhattacharya, an employee of the plffs.

5. I will take issue No. 2 first for consideration because I consider the evidence is all one way

under this issue, and that is in favour of the plffs.

6. Originally premises No. 47, Ripon Street, was one entire property, which has now been subdivided into two portions marked 47'A' and 47'B'. There was a partition proceeding between the plffs. and No. 47B, Ripon Street has been allotted to the Plaintiff Durga Prasanna. 47'A' Ripon Street has been allotted to the plffs. Nos. 1, 2, 4 and 5. Plffs. 1, 2, 4 and 5 have no house to live in Calcutta, and I am satisfied on the evidence that they *bona fide* require the said premises for their own use and occupation and for the purpose of building and rebuilding. (After discussion of the evidence the judgment proceeds :) I therefore, hold that the plffs. *bona fide* require the said premises for their own occupation and for building and re-building and I answer issue No. 2 in the affirmative.

7. Mr. Meyer has mainly defended the suit on issue No. 1. His submission is that the notice in this case is bad and insufficient on the ground that the lease was for manufacturing purposes.

8. The facts of the case may be briefly stated : There was a lease dated 18-4-1929, in favor of the defendant for twenty years, which expired on 30-4-1946. The lease is an exhibit and appears in the agreed brief of documents, which has been marked by consent as Ex. A. On the expiry of the lease it is the plffs' case that the deft. was allowed to remain as a tenant on a monthly rent of Rs. 175/- according to the English calendar month until the notice dated 8-3-1948, which is also to be found in the brief of documents. The notice to quit asked the deft. to vacate on the expiry of the month of March 1948.

9. The evidence on the point so far as is material has been on the following lines. The lease was taken by the deft. for various purposes, mainly for residential purpose of the deft. himself and for the purpose of setting up a printing press and for ordinary business purposes. It is denied on behalf of the plffs. that the lease was for manufacturing purpose. (After discussion of the evidence the judgment proceeds) : I am not satisfied with the evidence that the deft. gave and the method and manner of his giving evidence, and the deft's demeanour has left this impression in my mind that the defense of manufacturing lease was a last minute and inspired defense and was not a genuine and *bona fide* defense. Mr. Meyer for the deft. realized this difficulty and confined himself mostly to a question of the construction of the lease and of Section 106, T. P. Act.

10. The relevant clause in the lease is to be found in Clause 2, the material portion of which runs as follows :

"I shall pay the rent Rs. 175/- per month according to the English calendar month and I shall occupy the same for dwelling purpose, for setting up a press and for ordinary business purposes." On this Mr. Meyer has argued that the lease is for manufacturing purpose within the meaning of Section 106, T. P. Act. He has relied on the decision in '*Jayanti Hosiery Mills v. Upendra Chandra das*', After giving the most careful

consideration to Mr. Meyer's argument I have come to the conclusion that such a lease as in the present case on a proper construction does not bear the meaning that Mr. Meyer wants to give it. In my opinion the language of Section 106, T. P. Act is of great importance. The language so far as it concerns the present case is "a lease of immovable property for manufacturing purposes". On a construction of those words it seems to me that the very lease itself must be for manufacturing purpose and the purpose of the lease must be for manufacture. In other words, if the lease is for mixed or multiple purposes, like dwelling purpose, ordinary business purpose, as well as setting up a printing press, that is not a lease for manufacturing purpose within the meaning of Section 106, T. P. Act, but in my opinion is within the meaning of the words "any other purpose"

¹ AIR 1946 Cal 317 : 50 CWN 441

used later in the section.

11. The etymological meaning of the word 'manufacture' is of little help in this connection. It comes from the Latin word 'manus', the hand, and 'facere', to make or produce. The word 'manufacture' therefore etymologically means any thing that is made or produced by hand. But the word manufacture has acquired a much larger meaning and connotation than what its etymological origin implies.

12. Mr. Meyer has argued that printing is manufacture. I am unable to accept such a broad proposition. Printing of books or printing of documents is in my opinion not necessarily manufacture. Had it been so then when a typist in Counsel's Chambers types out manuscripts he can be said to be manufacturing. I do not think that is manufacture. In so far as ordinary printing is making a copy or an imitation I am not of the opinion that printing is necessarily manufacture. In the decision of '*Jayanti Hosiery Mills v. Upendra Chandra das*²', B.K. Mukherjea, J., made the observations in connection with a hosiery business, and points out that according to dictionary meaning manufacture means "to work up materials into forms suitable for use" and that such materials may not only be the original raw material but may also be partly or wholly manufactured articles which themselves may be used for manufacturing some other article.

13. The word 'manufacture' must in this context in my opinion be construed in a popular sense. The popular concept is that there must be production of a new or a different article or the process must be such as converts one kind of article into another kind. The observations of Lord Westbury, Lord Chancellor in '*Ralston v. Smith*³', at p. 246 are material on the point. They are :

"Your Lordships are well aware that by the large interpretation given to the word 'manufacture' it not only comprehends productions, but it, also comprehends productions, but it also comprehends the means of producing them. Therefore in addition to the thing produced it will comprehend a new machine or a new combination of machinery : It will comprehend a new process or an improvement of an old process."

I respectfully follow these observations as denoting what 'manufacture' means. In my judgment the word 'manufacturing' in Section 106, T. P. Act should be given its commonly understood meaning, which is neither the etymological meaning nor the technical meaning as applied to mechanical industry or commerce. Applying these tests and giving the popular meaning to the word "Manufacture" I am unable to hold that printing simpliciter is always manufacture. This is so far as the construction of the words used in Section 106, T. P. Act is concerned.

14. On the construction of the words in the particular lease I am also of the view that these words do not mean that the lease in this case was for manufacturing purposes. The material words in the lease are "for setting up a press". Those words by themselves in my opinion do not mean necessarily manufacture. Therefore, it cannot be said that this is a lease for manufacturing purpose.

²50 CWN 441 : AIR 1946 Cal 317

³(1866) 11 HLC 223

15. Mr. Meyer's argument that the lease in this case was for manufacturing purpose leads to a legal difficulty. Under Section 106, T. P. Act if the lease is for manufacturing purpose it will be deemed to be a lease from year to year. A lease from year to year under Section 107, T. P. Act, can be made only by a registered instrument. In this case there is admittedly no registered instrument and it is a case of holding over under oral arrangement. Although Section 106, T. P. Act provides that a lease for manufacturing purpose will be "deemed" to be a lease from year to year that does not in my view exclude such lease from the operation and requirement of Section 107, T. P. Act. A lease which under the law is "deemed" to be a lease from year to year" is in my view nonetheless "a lease from year to year" under Section 107 of the Act and must therefore satisfy the statutory requirement of registration subject of course to the provision of Section 53A T. P. Act. No question of Section 53'A' of the Act arises here for has any Issue been raised on that point. I am therefore unable to hold that there is a lease for manufacturing purpose in this case and answer Issue No. 1 in the negative.

16. In this case what are the facts? The deft. houses a library there. The deft. himself resides there. The deft. submits that the power of subletting is also given in the lease itself. Surely these are not manufacturing purposes. The other purpose is ordinary business purpose, which is also not necessarily manufacturing purpose. The setting up of the printing press again is not necessarily manufacturing purpose. In the written statement it is pleaded that there was manufacture of rubber and other manufactures carried on in the premises. No evidence whatever has been given either of rubber manufacture or any other manufactures. It is also pleaded in the written statement that the Plaintiff had full knowledge and notice that the deft. was using the said premises for manufacturing purposes. On behalf of the plffs. knowledge of notice has been denied. I need only add that in my view a lease for manufacturing purpose must be a lease which at its inception is for that purpose. The lease at the time of the grant by the landlord must be impressed which the purpose of manufacture. The fact that the premises after being taken is actually being used by the tenant for manufacture does not make the lease for manufacturing purpose within the meaning of Section 106, T. P. Act. It is necessary to emphasis that a lease or a

tenancy must be by agreement between the landlord and the tenant and both the parties must know that the lease is for manufacturing purpose at the time of the grant. If that is not so then the nature of subsequent user of the premises by the tenant without agreement of the landlord will not convert such a lease into one for manufacturing purpose.

17. In those circumstances, there will be judgment for the plfs. in terms of prayer (a) of the plaint with manse profits at the rate of rent from 1-4-1948, until delivery of possession. The plfs. are entitled to the costs of the suit. Certified for two counsel. The deft. will go on paying manse profits and send them to the plf's solicitor without prejudice to his rights and contentions. The decree is not to be executed for a fortnight after it is drawn up.

Suit decreed