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ALLENBURRY ENGINEERS PRIVATE LTD.

v.

RAMAKRISHNA DALMIA & ORS.

September 15, 1972

B [J. M. SHELAT, D. G. PALEKAR, K. K. MATHEW, S. N. DWIVEDI AND Y. V. CHANDRACHUD, JJ.]

Transfer of Property Act—S. 106 *and* 107—*Meaning of the word 'Manufacturer'—Whether lease for reconditioning and repairing vehicles is manufacture within s.* 106.

In 1953, an open piece of land in the city of Bombay belonging to Sir Sapurji Bharucha Mills Co. Ltd., was purchased by Bharat Insurance Co.
C Ltd. In 1947, the said piece of land was leased to Allenberry & Co. on a monthly rent of Rs. 1800/-. In 1950, the appellant Company was incorporated for the specific purpose of taking over the business of Allenberry & Co. In 1954, the appellant Company occupied the said leased land as tenant together with certain vehicles belonging to the said Allenberry & Co. at an agreed rent of Rs. 1800/- per mensem. A document of lease was executed by the parties for ten years. The document was not, however, registered with the result that it could not be tendered in
D evidence as one creating a lease.

On January 20, 1960, the Bharat Insurance Co. served a notice upon the appellant Company terminating the tenancy and called upon the Company to hand over quiet and vacant possession of the said land or part of it. Later, a suit was filed in the Court of Small Causes at Bombay, and after nationalisation, the L.I.C. was substituted for that of the Bharat Insurance Co. as the plaintiff in the said suit. It was con-
E tended by the appellant that since the tenancy was for manufacturing purposes, one month's notice terminating the tenancy was an invalid notice under s. 106 of the Transfer of Property Act. All the three Courts below, however, concurrently held that the tenancy was not satisfactorily proved to be for manufacturing purposes as alleged by the appellant company and in the absence of any proof as to the terms for which it was made, the notice terminating the tenancy, although it was a month's
F notice, was a valid notice and on that footing, decreed the suit. Two questions were raised before this Court: (1) That the tenancy being for manufacturing purposes, the presumption laid down in S. 106, Transfer of Property Act under which such tenancy has to be regarded as a tenancy from year to year, terminable by a six months' notice and not by a month's notice, must apply. (2) The second question was that in any event, the lease was for manufacturing purposes, and therefore, the said notice was not valid. Dismissing the appeal.

G HELD: (1) The expression "manufacturing purposes" in S. 106 of the Transfer of Property Act is used in its popular and dictionary meaning. The burden of proving that the lease was for manufacturing purposes lie on the appellant company who claims it to be so. That burden is to establish that the exclusive or the dominant purpose of the lease was the manufacturing purpose. [261D]

C. Mackertich v. *Stuart & Co. Ltd.*, A.I.R. 1970 S.C. 889, referred to.
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(ii) The word "manufacture", according to the dictionary meaning, is the making of articles or material by physical labour or mechanical power. "Manufacture" implies a change, but every change is not manu-

facture and 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 and use. [261F]

R. v. *Wheeler*, 2 R. ALD. 349 referred to.

(iii) The disputed premises were used mostly for storing the disposal vehicles together with spare parts etc., acquired along with them or purchased from the market for repairing and reconditioning and making the said vehicle fit for resale. There is no evidence except the bare word of one witness that parts such as chassis and bodies etc., were actually manufactured and replaced for the old. No books of account or log books showing the work carried on the premises or other documents were produced which would throw light on the activities carried on the premises. Even if the evidence of the said witness were accepted, *in toto*, and it is held that some spare parts were being manufactured for repairing or reconditioning the vehicles, the dominant purpose of the lease would still have to be regarded as one for storage and resale of the vehicles and not for manufacturing purpose. Manufacturing of spare parts would then be merely incidental to the main purpose of disposal of these vehicles. Therefore, the appellants have failed to establish that the dominant purpose of the lease was manufacturing purpose and therefore, the appellants could not have challenged the legality of the notice. That being the position, it is not necessary to go into the question whether S. 107 has an impact on S. 106 of the Transfer of Property Act. [265-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1072 of 1971.

Appeal by special leave from the judgment and order dated June 16, 1971 of the Bombay High Court in Special Civil Application No. 1604 of 1969.

M. C. Chagla, R. R. Zaiwala, P. C. Bhartari and Ravinder Narain, for the appellant.

V. M. Tarkunde, Madan Gopal Gupta, R. S. Sharma, Rameshwar, Dial, P. N. Chadha and *B. D. Sharma*, for respondent No. 1.

The Judgment of the Court was delivered by

Shelat, J. This appeal, by special leave, is against the judgment of the High Court of Bombay. When the special leave was granted, it was confined to the question whether the tenancy in favour of the appellant-company was one for manufacturing purpose, and if it was so, whether the notice terminating the tenancy was inadequate ?

The appeal first reached hearing before a Division Bench of this Court. At that time, the parties were agreed that the relationship between them was that of landlord and tenant. But

A the case of the appellant-company was that the lease in its favour was for a period of ten years, that such a lease was for manufacturing purposes, and therefore, could not be validly terminated by a month's notice. The respondents, on the other hand, contended that the lease was by an unregistered document, and that it was not a valid lease by reason of the provisions of ss. 106 and 107 B of the Transfer of Property Act. The Division Bench did not go into the question whether the lease was for manufacturing purposes or not. However, the Division Bench felt that the appeal raised important questions as to the impact of s. 107 upon s. 106 of the Act, and there being so far no decision of this Court upon such a question referred the appeal to a C larger Bench. That is now the matter has come up before us.

The premises with which we are presently concerned consist of an open piece of land adjoining Haines Road in the city of Bombay. Prior to 1963, the said piece of land belonged to a company called Sir Shapurji Bharucha Mills Co. Ltd. In 1953, the said piece of land was purchased by Bharat Insurance D Co. Ltd. It appears that in 1947 the said piece of land was leased to Allenbury & Co. on a monthly rent of Rs. 1800/- where the lessee kept a number of American vehicles used by the army during the Second World War and purchased by that company from the Disposal Department of the Government of India. In or about 1950, the appellant-company was incorpo- E rated for the specific purpose of taking over the business of Allenbury & Co. together with all its assets and properties including the said vehicles. In 1954, the appellant-company occupied the said leased land as tenant together with such of the said vehicles remaining undisposed of till then at an agreed rent of Rs. 1800/- a month.

F It is not in dispute that at that time a document of lease was executed by the parties, which according to the appellant-company provided for a lease for ten years. The document was, however, not registered with the result that it could not be tendered in evidence as one creating a lease. There was, however, no dispute between the parties that the appellant- G company paid and the respondents accepted all throughout rent from the appellant-company at the aforesaid agreed rate of Rs. 1800/- a month. On January 20, 1960, the Bharat Insurance Co. Ltd. served a notice upon the appellant-company thereby terminating the tenancy and called upon it to hand over quiet and vacant possession of the said premises on the ground that H the appellant-company had sub-let the said land or part of it. The appellant-company having failed to abide by that demand, a suit was filed in the Court of Small Causes at Bombay. On the nationalisation of the Life Insurance Companies and on the

Life Insurance Corporation of India being set up, the name of that Corporation was substituted for that of the Bharat Insurance Co. as the plaintiff in the said suit. The suit was henceforth continued by the Corporation.

Although the unregistered document could not go in evidence, the suit as well as the appeal arising therefrom before the Appellate Bench of the Small Causes Court proceeded on the basis that the relationship between the parties was that of landlord and tenant as there was no dispute that the occupation of the premises in question by the appellant-company was as a tenant irrespective of what the terms or the period of that tenancy were, which terms could not be proved as the document in respect thereof could not be brought on record by reason of its being an unregistered document. The Special Civil Application under Art. 227 of the Constitution filed in the High Court against the judgment of the Small Causes Court and confirmed by its Appellate Bench, also proceeded on the assumption that the relationship between the parties was that of landlord and tenant. All the three courts concurrently held that the tenancy, whatever its terms were, was not satisfactorily proved to be for manufacturing purposes as alleged by the appellant-company and in the absence of any proof as to the term for which it was made, whether it was for ten years or from year to year, the notice terminating the tenancy and calling upon the appellant-company to deliver vacant possession, although it was a month's notice, was not an invalid notice and on that footing decreed the suit.

In these circumstances, two questions were sought to be raised by Mr. Chagla. The first was that there being no dispute between the parties that the relationship between them was that of landlord and tenant and the respondents having accepted all along the said rent of Rs. 1800/- a month, the Court must proceed upon the basis that the occupation of the premises by the appellant-company was in the capacity as a tenant. According to him, if the appellant-company can establish that that tenancy was for manufacturing purposes, the presumption laid down in s. 106 of the Transfer of Property Act, under which such tenancy has to be regarded as a tenancy from year to year terminable by a six months' notice and not by a month's notice, must apply. It is true, said he, that under s. 107 of the Act a lease from year to year can be made only by a registered instrument, but that provision in no way controls the presumption laid down in s. 106 under which once it is proved that the parties were in the position of a landlord and a tenant and the tenancy was for manufacturing purposes, it has to be presumed to be one from year to year. According to him, the two sections are independent of each other, the one

A dealing with the user and notice, and the presumption arising from such user, and the other dealing with compulsory registration for a lease from year to year, or for a term exceeding one year. Mr. Tarkunde, appearing for the Corporation, on the other hand, disputed the construction of these two sections suggested by Mr. Chagla. The second question raised by Mr. B Chagla was that in any event the lease was for manufacturing purposes, and therefore, the said notice was not valid. Assuming that Mr. Chagla is right in the interpretation of ss. 106 and 107 suggested by him, even then the appellant-company has first to establish that the lease in its favour was for manufacturing purposes and it is then only that it can take advantage of the C rule of presumption laid down in s. 106.

The expression 'manufacturing purposes' in s. 106 is used in its popular and dictionary meaning, the Transfer of Property Act not having supplied any dictionary of its own for that expression. The burden of proving that the lease was for manu- D facturing purposes, must for the purposes of s. 106 of the Transfer of Property Act, lie on the party who claims it to be so, in the present case the appellant-company. That burden is to establish that the exclusive or at least the dominant purpose of the lease was the manufacturing purpose. [See *C. Mockertich* v. *Steuart & Co. Ltd.*(1)].

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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, 1203) According to the *Permanent Edition of Words and Phrases*. Vol. 26, 'manufacture' implies a change F 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. "The word 'manufacture'" said Abbott, C.J., in *R.* v. *Wheeler*(2) "has been generally under- G stood to denote, either a thing made which is useful for its own sake and vendible as such, as a medicine, a stove, a telescope, and many others; or to mean an engine or instrument, or some part of an engine or instrument, to be employed either in the making of some previously known article, or in some other useful purpose, as a stocking frame, or a steam engine for raising water from mines; or, it may perhaps extend also to a new process H to be carried on by known implements or elements acting

(1) A.I.R. 1970 S.C. 839.

(2) 2 B & Ald. 349, cited in Stroud's *Judicial Dictionary* (3rd ed.) Vol. , p. 1734.

upon known substances, and ultimately producing some other known substance but producing it in a cheaper or more expeditious manner, or of a better or more useful kind. No more philosophical or abstract principle can answer to the word 'manufactures'. Something of a corporeal and substantial nature—something that can be made by man from the matters subjected to his art and skill, or at the least some new mode of employing practically his art and skill, is required to satisfy the word". In *South Bihar Sugar Mills* v. *Union of India*,(1) the Act with which the Court was concerned was the Central Excise and Salt Act, 1944, which furnished no special definition of the word 'manufacture'. The question can canvassed there was whether carbon dioxide, one of the constituents of kiln gas produced as one of the processes necessary for refining sugar, could be said to have been manufactured, quite apart from the manufacture of sugar itself. This Court held that what was produced was kiln gas, a compound of different gases and not carbon dioxide, though it was one of the different gases which made up kiln gas and therefore did not attract item 14-H in the Schedule to the Act. Since the Excise duty was leviable under the Act on manufacture of goods, the Court explained the connotation of the word 'manufacture'. In so doing, the Court said that the word 'manufacture' implied a change, but that a mere change in the material was not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use. This was also the meaning given to the word 'manufacture' in *Union of India* v. *Delhi Cloth & General Mills*(2). A notification issued by the Government of U.P. under s. 3A of the U.P. Sales Tax Act, 1948 declared that the turnover in respect of medicine and pharmaceutical preparations would not be liable to tax except (a) in the case of medicine and pharmaceutical preparations imported into U.P., and (b) in the case of medicines and pharmaceutical preparations manufactured in U.P. The question was whether, when in a dispensary medicines and pharmaceutical preparations, as prescribed by a doctor, are mixed, the process of mixing results in manufacture of medicines. The question was answered in the negative on the ground that when a mixture of different drugs, as prescribed by a doctor, is prepared by a medical practitioner or his employee, especially for the use of a patient in the treatment of an ailment or discomfort diagnosed by such a medical practitioner by his professional skill, and which mixture is normally incapable of being passed from hand to hand as a commercial commodity, the medical practitioner supplying the medicine cannot be said to be a manufacturer of medicine and the mixture can-

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

(2) [1963] Supp. 1 S.C.R. 586.

A not be said to be manufactured within the meaning of the notification. In all these cases the statute or the notification concerned did not furnish any artificial meaning to the expression 'manufacture' and the Court applied, therefore, the ordinary meaning as commonly understood to that expression. The expression 'manufacturing purposes' in s. 106, thus, means pur-
B poses for making or fabricating articles or materials by physical labour, or skill, or by mechanical power, vendible and useful as such. Such making or fabricating does not mean merely a change in an already existing article or material, but transforming it into a different article or material having a distinctive name, character or use or fabricating a previously known article
C by a novel process.

The two cases cited by Mr. Chagla, viz., *Sedgwick* v. *Watney, Combe, Reid and Co.*(1) and *Action Borough Council* v. *West Middlesex Assessment Committee*(2), would not be of assistance as the question there discussed was not as to the meaning of the word 'manufacture', but whether the premises
D in question were industrial hereditaments within the meaning of s. 3 of the Rating and Valuation (Apportionment) Act, 1928. Likewise, decisions given by courts on the word 'manufacture' occurring in different statutes would not be of assistance where the statute concerned gives an artificial meaning or a special definition.

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Bearing in mind the connotation of the word 'manufacture' as understood in the decisions above-cited, we have to ascertain whether the appellant-company could be said to be carrying on operations in the premises in question which could properly be called manufacturing operations. On this question,
F the evidence on record is general character and almost meagre in quantum. Wit. Choradia, who was the managing director of the Bharat Insurance Co. between 1950 to 1954 and who used to reside in Delhi where the company had its headquarters, but occasionally used to visit its branch in Bombay, deposed that after the premises in question were purchased in 1953 by his
G company from Sir Shapurji Bharucha Mills, he visited them and found them to comprise an open land with sheds and a godown. There were lying there army automobiles, jeeps etc., but he did not notice at that time any manufacturing process going on. He again visited the premises in 1954 when also he found no manufacturing operations going on Wit. V. G. Kannan was an accountant in Allenbury & Co. Ltd. He used to go to the
H premises in 1950 and 1951 to pay wages to the workmen engaged there by his company. The premises had a workshop, a godown

(1) [1931] A.C. 446. (2) [1949] 2 K.B. 10.

and a small office and the rest was open land. The company wound up its business in 1950, but there were lying in the premises steel racks belonging to his company, to inspect which he had to go there on several occasions. He also said that he did not see any manufacturing processes going on except that the workshop was used for repairing the disposal vehicles lying stored there. This was the position till July-August 1954 and till then there was no change in the user of the premises. Wit. J. P. Jain examined by the appellant-company was the Central Manager of the Bombay branch of Allenbury & Co. from 1946 to 1950. Thereafter he became the managing director of the appellant-company. According to him, Allenbury & Co. Ltd. had in 1948 purchased disposal vehicles which were stored for sale in the premises in question. The vehicles were in a damaged condition when they were purchased. In some cases chassis were missing or they were bent or broken; most of the parts were broken and missing. These used to be repaired and then sold. The company had put up a workshop where these vehicles were repaired, reconditioned and painted before they were sold. The repairs, according to him, involved in some cases making of new bodies and new parts. For that purpose, the appellant company had to have in the worshop lathes, drill machines, velders etc. and had employed some 200 to 250 workmen. When the appellant-company took over the business of Allenbury & Co. Ltd. in 1950-51, there were in all 189 vehicles of different types in the suit premises. The working, he said, of overhauling, reconditioning and repairing these vehicles went on until 1957 when reconditioning of vehicles stopped presumably because the vehicles were sold out. The premises had on them a servicing station also with a trench in the centre for washing the vehicles and where spare part needed for repairs used to be stored. There was also an office and a store room where spare parts, oils and other stores purchased locally were kept. He denied that the premises were used only for repairing the vehicles. Besides his oral testimony, there is one letter on record written by this witness to Allenbury & Co. Ltd., dated November 21, 1950 giving details of stocks lying on these premises when that company's business was taken over by the appellant-company. The schedule to this letter gives particulars of these stocks, viz., 182 vehicles of different types, stores, accessories, spare parts purchased from the market or the Disposal Directorate, tools and other workshop equipment and three cars under repairs. The schedule shows that the premises were used till then for storing the Disposal vehicles, together with spare parts etc. acquired along with them or purchased from the market for repairing and reconditioning and making them fit for resale. There is no evidence except the bare word of wit. Jain that parts such as chassis and bodies etc. were actually manufactured and replaced for the old. No books of account

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A or log books showing the work carried on on the premises or other documents were produced which would throw light on the activities carried on the premises. Even if the evidence of Jain were accepted *in toto*, and we were to find that some spare parts were being manufactured for repairing or reconditioning the vehicles, the dominant purpose of the lease B would still have to be regarded as one for storage and resale of the vehicles and not for manufacturing purposes. Manufacturing of spare parts would then be merely incidental to the main purpose of disposal of these vehicles as without repairing or reconditioning them, such disposal could hardly have been possible. In our opinion, the appellants failed to establish that the dominant C purpose of the lease was manufacturing purpose. In that view, the appellants could not have challenged the legality of the notice. The High Court, therefore, was right in the conclusion it arrived at and no reason has been shown justifying our interference with it. That being the position, it is not necessary to go into the question whether s. 107 has any impact on s. 106 of the Transfer D of Property Act, a question which the Division Bench, while referring this appeal to a larger Bench, though the appeal raised.

For the reasons stated above the appeal fails and is dismissed with costs. Mr. Chagla appealed to us that some time may be given to the appellant-company for vacating the premises in question as, according to him, there are some machines still lying E on the premises which will have to be removed. We give the company one month's time from today for vacating and giving quiet possession to the respondent.

S.C. *Appeal dismissed.*