

(2008) 09 RAJ CK 0045
In the Rajasthan High Court

Bhagwan Singh

APPELLANT

Vs

Makkhan Singh

RESPONDENT

Date of Decision : 02-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100A, 96

Citation : (2009) 1 RLW 469

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Judgement

Dinesh Maheshwari, J.—This first appeal u/s 96 of the CPC (CPC) has been preferred by the defendant in a suit for specific performance that was decreed by the Additional District Judge (Fast Track), Anoopgarh on 24.10.2005. After summoning the record and hearing the counsel for both the parties as the plaintiff-respondent had put appearance in caveat, this appeal was admitted for consideration on 19.02.2007; and execution of the impugned decree was ordered to be stayed and status quo regarding possession was ordered to be maintained with certain clarifications.

2. This appeal was again processed by the office for the purpose of preparation of paper-book and a notice was exhibited per Rule 181 of the Rules of the High Court of Judicature for Rajasthan, 1952 ("the Rules" hereafter); and, for the list of documents having not been filed and the initial charges having not been deposited, the matter was listed before the Deputy Registrar (Judicial) and then before the Registrar (Administration). Compliance having yet not been made, the matter was ordered to be placed before the Court.

3. When listed before the Court on 28.07.2008, learned Counsel for the appellant moved an application (IA No. 9227/2008) in this case for dispensing with preparation of paper-book. However, learned Counsel for the respondent prayed for time to state his response to the application and, at request, the matter was adjourned.

4. Thereafter, on 18.08.2008, learned Counsel for the respondent made elaborate submissions raising objections against the prayer for dispensing with preparation of paper-book; and referred" to the decision of this Court in the case of Munshi Ram v. Prakash Chand and Anr. 1997 (1) RLW 183 and so also the provisions as contained in Chapter XIII of the Rules. Learned Counsel for the respondent contended that the application as moved by the appellant could not be allowed for being vague and uncertain with mere suggestion that in the interest of justice preparation of paper-book be dispensed with but without specifying as to how dispensing with preparation of paper-book would be in the interest of justice? The emphasis of the learned Counsel for the respondent has been that preparation of paper-book being the requirement of the Rules, unless a strong case is made out, the same cannot be done away with at the mere askance. According to the learned Counsel for the respondent, preparation of paper-book is necessary for adequate and proper hearing of the case; and the learned Counsel ventured to submit that if at all the appellant was not willing to proceed with preparation of the paper-book, the respondent would be ready to have prepared such paper-book and to place the same before the Court.

5. It is relevant to point out at this juncture that in the recent past, when such a regular first appeal filed u/s 96 CPC was placed before the Court in default category for the appellant having not filed the list of documents and/or having failed to deposit initial charges for the purpose of preparation of paper-book, and any application was moved for dispensing with preparation of paper-book, this Court, on being satisfied after examining the record of the case that the matter could be heard without paper-book, granted such application and preparation of paper-book by the office was ordered to be dispensed with, of course, with liberty to the appellant to produce a complete or mini paper-book, if so desired, for the purpose of facilitating proper appreciation of the relevant material.

6. Further, upon noticing that a large number of such regular first appeals were pending only for the purpose of preparation of paper-book and hence were not coming up for hearing before the Court and were getting old and older, the office was directed to place the oldest of such first appeals (pertaining to the years 1980 to 1988) before the court; and in such matters too, when any application was moved for dispensing with preparation of paper-book and upon examination of the record this Court was satisfied that the matter could be heard without paper-book, preparation of paper-book was ordered to be dispensed with and the appeal was ordered to be placed for hearing. It has to be acknowledged that in such matters, whenever an application for dispensing with preparation of paper-book was moved and the learned Counsel for the opposite party, if represented, was called upon to state his response to the application, almost invariably, the counsel stated no objection in dispensing with preparation of paper-book.

7. Though the submissions as made in this case on behalf of the respondent in opposition to the same ordinary and rather innocuous prayer of dispensing with preparation of paper-book are difficult to be accepted; and the questions on want

of "particulars" of "interest of justice" as raised by the learned Counsel for the respondent are required to be rejected as being of rather over-zealous but unnecessary arguments; and, as this Court felt satisfied after examining the record that the matter could adequately be heard without such paper-book, the application would have simply been granted while dispensing with preparation of paper-book as done in the past in a large number of cases but, for the arguments as advanced on behalf of the respondent, and for the matter being of recurrence before the Court, it was considered appropriate to have a close and deeper look at the issue of preparation of paper-book for the purpose of hearing of a civil first appeal.

8. And, after going through the decision of the Hon''ble Single Judge of this Court in Munshi Ram's case as relied upon by the learned Counsel for the respondent and the other decision of the Hon''ble Division Bench of this Court in the case of Mansukhram Chela of Bhikaram Maharaj v. Hemaram Chela of Shri Jasuram 1963 RLW 615 as referred in the said decision of Munshi Ram; and after taking into comprehension the scheme and object of the relevant provisions of the Rules, the proposition of mandatory requirement of preparation of paper-book in civil first appeal having the valuation exceeding Rs. 20,000/- even when the same is to be heard by a Judge sitting singly, as propounded in Munshi Ram's case does not appear to be supported by the Rules and stands rather contradistinguished by the Division Bench decision in Mansukhram's case (supra).

9. In Munshi Ram's case (supra), the Hon''ble Single Judge of this Court has pointed out that the matter was taken up for consideration of a preliminary question relating to preparation of paper-book, and upon the directions of the Court, the Deputy Registrar (Judicial) submitted his report on 27.11.1996 and stated that in S.B. Civil First Appeal cases, practice of preparation of paper-book had never been followed and the said decision in Mansukhram Chela of Bhikaram Maharaj was brought to the notice of the Court. The Hon''ble Single Judge, however, was of opinion that the matters were required to be dealt with according to the statutory rules and not according to the practice developed by the office; and observed that in view of Chapter XIII of the Rules, the practice of non-preparation of paper-books in appeals having valuation beyond Rs. 20,000/- was required to be disapproved.

10. The Hon''ble Single Judge also observed in Munshi Ram that Chapter XIII of the Rules has specific object and nexus in early disposal of first appeals and that preparation of paperbooks would always be convenient to the Bench and the Bar in effective adjudication and that it would always be helpful to the Bench for deciding the first appeals expeditiously which was the call of the hour. Thereafter, the Hon''ble Single Judge referred to the definition of paper-book as contained in Rule 3 of the Rules and referred to the requirement of preparation of paper-book for hearing of a civil first appeal and also to the process and procedure for preparation of such paper-book as contained in Chapter XIII of the Rules; and held that the same could not be ignored merely on the basis of the practice

developed in the office of the Registry. The Hon''ble Single Judge pointed out some of the aspects relating to the change of jurisdiction to hear the first appeal cases from time to time and as to whether paper-books were prepared or not with such changes in a tabular form; and observed that due to change of jurisdiction to hear and dispose of the first appeals from time to time, the office of the Registry had wrongly deduced that preparation of paper-book under the Rules was necessary only when the first appeals were to be heard by the Division Bench and not by a Judge sitting singly.

11. The Hon''ble Single Judge in Munshi Ram''s case also referred to the decision of the Hon''ble Division Bench in the case of Mansukhram (supra) but pointed out that therein the prayer for dispensation of preparation of paper-book was opposed on the ground that there was no such provision in the Rules and it was argued that the appeal could not be heard unless paper-book was prepared; and such an argument was negatived by the Division Bench holding that there was no rule going to the length of saying that no appeal would be heard without paper-book. The Hon''ble Single Judge further pointed out that in support of such conclusion, the Division Bench took note of the fact that before formation of the State of Rajasthan, the High Court that functioned at Jodhpur did not require paper-books in first appeals and used to study the cases with the help of original records and the same procedure might be followed in those cases where due to paucity of fund, a poverty-stricken litigant was unable to deposit the expenses for preparation of paper-book. The Hon''ble Judge in Munshi Ram''s case was of opinion that the facts and circumstances in which the Division Bench of this (sic) held in the case of Mansukhram that the Court should study the case with the (sic) of the original record, would not apply as a rule to every first appeal which is to be heard and disposed of by the Single Judge under the Rules of the Court; and held that the ratio of Mansukhram would be applicable only to the case where the plaintiff had filed the suit as a pauper and also filed the first appeal as a pauper and not otherwise.

12. The Hon''ble Single Judge, thus, issued the directions per Rules 176 of the Rules that in the first appeals having valuation of Rs. 20,000/- or more, the paper-books were required to be prepared without any exception; and that in the cases of valuation below Rs. 20,000/-, the paper-book would be prepared when ordered so by the Court and not otherwise. It was further observed that in rarest of the rare cases, if the Court was satisfied after looking into the facts and circumstances of the case, the preparation of paper-book could be dispensed with by a speaking order after hearing both the parties.

13. The observations as made, the findings as arrived at, and the directions as issued by the Hon''ble Single Judge in Munshi Ram''s case read as under:

(12) It appears to me that due to change of jurisdiction to hear and disposed off the first appeals from time to time, office of the Registry has wrongly deduced that preparation of paper-books under the Rules of the Court are necessary when first appeals are heard by the Division Bench alone not by a learned single Judge

sitting singly. Regarding change of jurisdiction to hear and dispose off the first appeals from time to time under the Rules of the Court is being demonstrated by the following table:

_____ Jurisdiction to hear & D.B./ Paper-book whether prepared or not, as dispose off Civil S.B. required under Rule 176 (2) Appeals _____	
	FROM
1952 TO 1969 :	
(i) Upto Ten Thousand S.B. No	
(ii) Exceeding Rs. D.B. In the matters exceeding Ten thousand 10,000/- but less than Twenty Thousand no paper books was required	
FROM 1969 TO 1976:	
Exceeding Twenty D.B. Yes Thousand	
FROM 1976 TO 1982:	
Exceeding fifty D.B. Yes Thousand	
FROM 1982 onwards: All Civil Appeals S.B. Paper-book are not prepared. _____	

(13) The decision rendered in case of Mansukhram Chela of Bhikam Ram Maharaj (supra) is not applicable to the facts and circumstances of the present cases. The ratio decidendi of the Division Bench of this Court in case of Mansukhram Chela of Bhikam Ram (supra) was about dispensation of paper-book. The prayer for dispensation of preparation of paper-book in that case was opposed by the respondent on the ground that there is no provision under the Rules of the Court for dispensation of preparation of paper-book and it was argued that the appellant's appeal cannot be heard by the Court unless paper-book is prepared first. The aforesaid argument was negated by the Division Bench holding that there is no rule which goes to the length of saying that no appeal would be heard without paper-book. In support of the aforesaid ratio decidendi, the Division Bench of this Court has taken note of the fact that before formation of the State of Rajasthan, the High Court which functioned at Jodhpur did not require paper-books in first appeals and the Court used to study the cases with the help of original records. The same procedure may be adhered in those cases where due to paucity of fund, a poverty-stricken litigant is not able to deposit expenses for preparation of paper-book.

(14) In the facts and circumstances, in which the Division Bench of this Court in case of Mansukhram Chela of Bhikam Ram Maharaj (supra) held that the Court should study the case with the help of the original record, is not applicable as a rule in every first appeal which is to be heard and disposed off by the learned Single Judge under the Rules of the Court. In fact, ratio of the aforesaid case

would be applicable only in those cases where the plaintiff filed a suit as a pauper and has also filed a first appeal as a pauper and not otherwise.

(15) From the aforesaid discussion, I am of the view that unless otherwise ordered no paper-books shall be required to be prepared by the office of the Registry in the cases of such first appeals where valuation is below Rs. 20,000/- but in other cases of first appeals where valuation of first appeals are either Rs. 20,000/- or more than Rs. 20,000/- the paper-books are to be prepared under the Rules of the Court without any exception. Even in those cases where valuation of a first appeal is below Rs. 20,000/-, if the court directs to prepare the paper-book in such cases only after orders of the Court, the paper-books would be prepared and not otherwise.

(16) In abundant caution, it is made clear that in view of the decision rendered by the Division Bench of this Court in case of Mansukhram Chela of Bhikam Ram Maharaj (supra) in rarest of rare cases if the Court is satisfied after looking into the facts and circumstances of a particular case, the preparation of paper-book can be dispensed with by speaking order after hearing both the parties.

(17) Looking into the long drawn practice developed in the office of the Registry in non-preparation of paper-books even in those S.B. First Appeals where valuation of such appeals are Rs. 20,000/- the penal consequences of dismissal of S.B. First Appeals as envisaged under Rule 184 of the Rules of the Court shall be kept in abeyance for a period of three months from today.

(18) As a result of the afore-mentioned discussion, the Registry of this Court is hereby directed to follow the detail Rules prescribed under Chapter XIII of the Rules of the Court regarding preparation of paper-books in S;B. First Appeals in which valuation is either Rs. 20,000/- or more than Rs. 20,000/-. In those cases, in which valuation of First Appeal is below Rs. 20,000/- no paper-book is required to be prepared unless otherwise ordered by the Court for preparation of paper-book.

14. With great respect it is required to be pointed out that while issuing the directions aforesaid, some relevant parts of the Rules seem to have escaped the attention and so also the crucial and relevant observations of the Hon''ble Division Bench on the point in issue as made in Mansukhram (supra) seem to have gone unnoticed; and the aforesaid directions in Munshi Ram, when running contrary to the observations of the Hon''ble Division Bench and so also to the relevant parts of the Rules cannot, with respect, be considered to be those of a binding declaration of law.

15. Even when the provisions regarding preparation of paper-book are contained in Chapter XIII of the Rules, noticeable It is that Rule 55 of the Rules regulates essentially the jurisdiction of the Single Judge of this Court. A civil appeal, including a first appeal, is also a part of jurisdiction of a Judge of this Court sitting alone. The said Rule 55 has undergone several of the changes over the years and salient features thereof, so far relevant for the purpose of civil first

appeals, are referred herein below.

16. It may be pointed out that, initially, the provisions relating to the ordinary jurisdiction of the Single Judge of this Court in relation to the appeals as contained in paragraphs (i) and (ii) of Rule 55 (while omitting the other paragraphs being not relevant for the present purpose) read as under:

55. Except as hereinafter provided by these Rules or other law, the following cases shall ordinarily be heard and disposed of by a Judge sitting alone, namely-

(i) a motion for the admission of a memorandum of appeal or cross-objection or (an) application for ex parte interim order on an application; (ii) a civil appeal (except a First Appeal other than an Execution First Appeal, from an original decree) from a decree or order in which the value of the appeal for the purpose of jurisdiction does not exceed in case of execution appeals five thousand rupees, and in case of other appeals two thousand rupees:

Provided that in computing such value, the value for the purpose of jurisdiction of any cross-objection filed therein shall be added to such value: and

Provided further that where an ad valorem court fee has been paid such value shall be deemed to be the amount on which such court-fee has been paid;

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17. Then, by way of the amendment made under the notification published on 16.01.1954, the changes were brought about in Rule 55 as under:

The following shall be substituted for paras (ii) and (iii) in Rule 55.

(ii) a civil appeal (excluding execution appeals) from a decree or order other than an appeal from a decree in a suit of which the valuation exceeds five thousand rupees,

(iii) an execution appeal in which the value of the appeal for the purpose of jurisdiction does not exceed five thousand rupees. Provided that in computing such value the value for the purpose of jurisdiction of any cross-objection filed therein shall be added to such value, and Provided further that where an ad valorem court fee has been paid such value shall be deemed to be the amount on which such court-fee has been paid." The existing paragraph (iii). and subsequent paragraphs shall be re-numbered accordingly.

The amendment shall come into force from 1-1-54.

18. The aforesaid paragraph (ii) of Rule 55 was further substituted by way of the amendment notification published on 05.11.1955 in the following manner:

The following shall be substituted for para (ii) of the rule, 55

(ii) a Civil appeal (excluding execution appeals) other than an appeal arising from a suit of which the valuation exceeds five thousand rupees.

19. There had been changes from time to time in such jurisdiction of Single Judge concerning the appeals and instead of multiplying such references, suffice it shall be to notice that by way of the amendment notification published on 27.03.1958, the jurisdiction with the Single Judge to hear the appeals with reference to valuation of the suit not exceeding Rs. 10,000/- came to be provided with the following substitution in Rule 55:

(1) Substitute the following for paras (ii) and (iii) of Rule 55:

(ii) "A civil appeal (excluding execution appeals) other than an appeal arising from a suit of which the valuation exceeds ten thousand rupees.

Provided that in computing such value the value for the purpose of jurisdiction of any cross-objection filed therein shall be added to such value, and

Provided further that where an ad valorem court fee has been paid such value shall be deemed to be the amount on which such court fee has been paid.

(iii) an execution appeal in which the value of the appeal for the purpose of jurisdiction does not exceed ten thousand rupees.

20. The aforesaid provision relating to the jurisdiction of the Single Judge with reference to the suit valuation came to be altered further; and the jurisdiction of the Single Judge was enhanced in relation to the appeals arising from the suits of which the valuation had been less than Rs. 20,000/-, by way of the amendment brought about by the notification dated 01.02.1969 published on 05.02.1969, relevant parts whereof read as under:

1. In Clause (ii) of Rule 55, for the words "exceeding ten thousand rupees" occurring after the word "valuation", the words "is twenty thousand rupees or above" shall be substituted.

2. The two provisos to Clause (ii) of Rule 55 shall be omitted.

21. This jurisdiction of the Single Judge of this Court to hear the appeals with reference to the suit valuation came to be enhanced further under the notification dated 16.08.1976, published on 02.09.1976, whereby, in relation to the valuation as stated in thousand rupees, the word "fifty" came to be substituted for the word "twenty". .

22. Thereafter, by way of notification dated 19.08.1982, published on 26.08.1982, the entire of such Rule 55 was altered and now, for the relevant part regarding appeals, it simply reads that,-

55. Jurisdiction of a single Judge.- Except as provided by these Rules or other law, the following cases shall ordinarily be admitted, heard and disposed of by a Judge sitting alone, namely:

(i) a motion for the admission of a memorandum of appeal or cross-objection or an application for ex parte interim order;

(ii) a civil appeal

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23. There are various other clauses in the said Rule 55 pertaining to the other class and category of cases that have also undergone various alterations but the same have not been referred herein being not relevant for the present purpose.

24. It could be noticed at once that after the notification dated 27.03.1958 and until issuance of the notification dated 01.02.1969, the first appeals arising from the suits having valuation not exceeding Rs. 10,000/- were to be heard by the Single Judge. Thereafter, from 01.02.1969 until issuance of the notification dated 16.08.1976, the first appeals arising from the suits having valuation below Rs. 20,000/- were to be heard by the Single Judge. Then, from 16.08.1976 to 19.08.1982, the first appeals arising from the suits having valuation below Rs. 50,000/- were to be heard by the Single Judge. Obviously, during the operation of such requirements of Rule 55, the appeals arising from the suits having valuation higher than that mentioned in the said Rule 55 were to be heard by a Bench consisting of more than one Judge. However, after 19.08.1982 every first appeal, irrespective of suit valuation, was and is to be heard by the Single Judge.

25. The significant aspect of the matter had been that right from the year 1952, in whatever form the jurisdiction was defined with reference to the valuation, so far the appeal before the Single Judge was concerned, the paper-book was not prepared.

26. At this juncture, apposite it is to refer to the relevant features of Chapter XIII of the Rules dealing with preparation of paper-book in first appeal cases. As already noticed, at the initial stages, when Rule 55 had provided for jurisdiction with the Single Judge of this Court to hear the appeals with a comparatively lesser valuation, the corollary was that the appeals with the valuation exceeding that envisaged by Rule 55 were to be heard by a Bench consisting of more than one Judge and, obviously, preparation of paper-book was felt a necessity for such appeals and hence came the provisions as contained in Chapter XIII. Noticeable it is that at the initial stages, the contents of paper-book required, amongst others, even transliteration or translations of the pleadings, evidence, judgment etc.; but translation was not required for the papers written in Hindi language in the cases having valuation below Rs. 20,000/-. Such were the provisions contained in the original Rule 176 that read as under:

176. (1) The paper book in a First appeal shall consist of a fly-sheet, an index and copies, transliterations or translations of the following papers, namely:

(a) plaint;

(b) written statement;

(c) further pleadings, if any;

(d) statements of parties or their pleaders recorded under rules 1 and 2 of Order

X of the Code,

(e) Judgment under appeal;

(f)decree under appeal;

(g) memorandum of appeal;

(h) such evidence, oral or documentary or other papers as the appellant may wish to refer to,

(i) memorandum of cross-objection, if any, and

(j) such other evidence, oral or documentary or other papers as the respondent may wish to refer to.

(2) No translation shall be required of any papers or documents which are written in the Hindi language in cases of which the valuation is below Rs. 20,000/-.

27. Coupled with the aforesaid, Rule 177 provided that paper-book in first appeal valued at Rs. 20,000/-or more would be printed and in other first appeals unless otherwise ordered, it would be type-written. The then existing Rule 177 read as under:

177. The paper book in First Appeals valued at twenty thousand rupees or more shall be printed. In other First Appeals, unless otherwise ordered, it shall be typewritten. In computing the value of an appeal for the purpose of this Rule, the value of the cross-objection filed therein shall be added to the value of the appeal.

28. As noticed above, by the notification dated 01.02.1969 the jurisdiction in relation to the appeals came to be provided in the manner that the appeals arising from the suits having valuation below Rs. 20,000/- were to be heard by the Single Judge. Obviously, the other appeals arising from the suits of valuation of Rs. 20,000/- or above were to be heard by a Bench consisting of more than one Judge. In keeping with this position and so also the other changes in the working system of the Court, the entire of Chapter XIII came to be altered under the notification dated 04.09.1970 as published on 17.12.1970; and Rules 176 and 177 in their new form appeared as under: -

176. Paper Book in First Appeal.- (1) The paper book in a First Appeal shall consist of a fly sheet, an index and copies of the following papers, namely:

(a) plaint;

(b) written statement;

(c) further pleadings, if any;

(d) statements of parties or their pleaders recorded under rules 1 and 2 of Order X of the Code;

- (e) Judgment under appeal;
- (f) decree under appeal;
- (g) memorandum of appeal;
- (h) such evidence, oral or documentary or other papers as the appellant may wish to refer to;
- (i) memorandum of cross-objection, if any, and
- (j) such other evidence, oral or documentary or other papers as the respondent may wish to refer to.

(2) Unless otherwise ordered, no paper book shall be required in cases of which the valuation is below Rs. 20,000/-.

177. Paper Book to be type-written.- The paper book in the first appeal shall ordinarily be typewritten.

29. The features of such amendment of Chapter XIII are almost unmistakably apparent that the earlier requirements of translation of the contents of paper-book and printing of paper-books in the cases of valuation above Rs. 20,000/- were done away with; and, significantly, Sub-rule (2) of Rule 176 provided that no paper-book would be required in the cases of which valuation was below Rs. 20,000/- unless otherwise ordered.

30. Chapter XIII aforesaid was not to be and cannot be read in isolation and disjointed from other relevant Rule 55 of the Rules. A conjoint reading of the said amended provisions of Chapter XIII with the then existing provision of Rule 55 makes it absolutely clear that for the jurisdiction to hear the appeals having suit valuation below Rs. 20,000/- being with the Single Judge of this Court, the Rules provided that the paper-book would not be required in such matters. The other significant part of the matter was that at the relevant time, the appeals with valuation exceeding Rs. 20,000/- were to be placed before a Bench of more than one Judge. Obviously, at the relevant time, some provisions for paper-book were required to be made in relation to the first appeals for the reason that the jurisdiction to hear the first appeals was bifurcated with reference to their suits' valuation and, while the appeals upto a particular valuation were to go before the Single Judge, the other appeals exceeding that valuation were to go before a Bench larger. The Rule requiring preparation of paper-book had essentially its operation in relation to an appeal that was to be placed for hearing before a Bench consisting of more than one Judge.

31. It could also be noticed from Rule 227 contained in Chapter XIV that paper-book is envisaged to be prepared in the cases that are listed for hearing before a Bench consisting of more than one Judge. It could further be noticed that even in Rule 240 (2) it is made clear that no paper-book will ordinarily be prepared in the cases heard by a Single Judge.

32. The Rules being essentially to regulate the practice of the Court, the practice followed prior to the amendment of Chapter XIII in the year 1970 and even after the amendment of the year 1970 until the decision of Munshi Ram, makes it absolutely clear that the provisions relating to preparation of paper-book were meant to be applied when the appeal was to be placed for hearing before a Bench consisting of more than one Judge and not for such kind of the appeal that was to be placed for hearing before a Judge sitting singly.

33. The clinching aspect of the matter is that the operation of the Rules as indicated above had already been succinctly indicated by the Hon''ble Division Bench in Mansukhram Chela of Bhikaram Maharaj (supra) after examining Chapter XIII of the Rules. The concise and significant observations of the Hon''ble Division Bench in Mansukhram Chela of Bhikaram Maharaj (supra) had been,-

We have gone through the rules in Chapter XIII of the High Court Rules. In Single Bench appeals no paper book is prepared. It is only in D.B. cases that a paper book is considered necessary for the convenience of the Court and the members of the Bar.

(underlining supplied)

34. Significant further it is to notice that the Hon''ble Division Bench of this Court made the aforesaid observations on 29.04.1963. At the relevant point of time, the appeals arising from the suits exceeding in valuation of Rs. 10,000/- were to be heard by a Division Bench but the appeals arising from the suits having valuation not exceeding Rs. 10,000/- were envisaged by Rule 55 to be heard by a Judge sitting alone and yet, the Hon''ble Division Bench clearly pointed out on Chapter XIII that in Single Bench appeals, no paper-book was prepared and only in Division Bench cases the paper-book was considered necessary for the convenience of the Court and the members of the Bar. With great respect, the crucial and decisive observations of the Hon''ble Division Bench of this Court on Chapter XIII of the Rules that "in Single Bench appeals no paper book is prepared" seem to have gone unnoticed in Munshi Ram. The said being the observations of the Division Bench would, obviously, prevail over the observations of the Hon''ble Single Judge In Munshi Ram's case; and for this reason alone, the decision in Munshi Ram cannot be taken to be a binding declaration of law.

35. From the observations of the Hon''ble Division Bench in Mansukhram Chela of Bhikaram Maharaj (supra), it is also evident that paper-books were being prepared in the Division Bench cases for the convenience of the Bench and the Bar. The Rules had never envisaged that a paper-book is to be prepared in the matter to be laid before a Judge sitting singly. Even when Chapter XIII in its form has remained in the statute book, the same had not been operated in relation to the appeals to be heard by the Single Judge and cannot be said to be operative so long and so far the jurisdiction to hear the first appeals is with the Single

Judge of this Court. With utmost respect, it appears that the provisions as contained in Chapter XIII of the Rules have gone in, and would remain in, hibernation until jurisdiction to hear first appeal is with a Judge sitting alone.

36. The position cannot be gainsaid that the view being expressed herein is contrary to the view expressed in Munshi Ram's case and, ordinarily, for taking a view different than that expressed by a co-ordinate Bench, the matter would have been referred for consideration of a Larger Bench; but and however, there appears no necessity of requiring this aspect of matter to be placed for consideration of a Larger Bench When it is noticed that in Munshi Ram's case the view came to be expressed-per Incurium the relevant parts of the Rules and so also the relevant observations of the Hon'ble Division Bench; and further, for the view being expressed herein relates only to the practice and procedure the purpose of regulating the hearing of the appeals by the Court and the fundamental principles governing the rules of such practice and procedure being that the same are intended to facilitate and not to hinder the cause of justice.

37. It may in the passing be observed that there are various other facets of the matter wherefor the provisions as contained in Chapter XIII of the Rules, even when read literally, cannot be said to be operative nor appear expedient for the purpose of hearing of a first appeal by the Single Judge of this Court. The rules of practice are required to be operated in the manner that they provide impetus to, and do not impede, the expeditious consideration and disposal of the matters. In Munshi Ram, though the Hon'ble Single Judge was pleased to observe that preparation of paper-books would always be convenient to the Bench and the Bar in effective adjudication and that it would always be helpful to the Bench for deciding the first appeals expeditiously; and expeditious hearing was pointed out to be the need of the hour;. however, as on date, the hard reality is that a substantial number of very old first appeal cases (some about 28 years old) are waiting for their turn to be taken up for preparation of paper-book and hence, are not coming up for hearing. Then, there exists an incongruity inasmuch as there had been later amendments in the Rajasthan Civil Court Ordinance and with enhancement of pecuniary jurisdiction of the subordinate Courts, the first appeals relating to the suits having valuation upto Rs. 50,000/- would not ordinarily come to the High Court but Rule 176 in its present form provides for preparation of paper-book in relation to the appeals having valuation at or above Rs. 20,000/-. Furthermore, with amendment to the CPC in the year 2002 even an intra-court appeal against the decision rendered in first appeal would not be available per its amended Section 100-A. Yet further, with change of the rules of practice and procedure, now the case records do contain pleadings and judgments even in electronic prints and the evidence is also available in such prints or neat typewriting. Mere multiplication of paper work with preparation of paper- book for hearing of every first appeal does not appear to be a necessity nor would be serving any purpose. In the present set up, even the necessity of filing of extra set of papers in relation to Single Bench cases has been dispensed with under the administrative order issued on 18.01.2006. However, dilatation on

these and related aspects and angles does not appear necessary in this order for the simple reason that for the issue at hands, it is clear from the Rules and the Division Bench decision aforesaid that the preparation of paper-book is not necessary when the first appeal is heard by a Judge sitting alone.

38. As per the scheme and object of the relevant provisions of the Rules and following the aforementioned decision of the Hon'ble Division Bench in *Mansukhram*, it is held that, irrespective of valuation, so long a first appeal is to be heard by a Judge sitting alone, preparation of paper-book is not necessary.

39. It may also be observed that though there is no mandatory requirement of preparation of paper-book in relation to a first appeal so long the Single Judge of this Court hears the same but then, in any given case, if and as considered necessary, the Court could direct preparation or presentation of full or mini paper-book. Similarly, when any party feels it appropriate to present the relevant material in the form of a neat compilation, it could always be done with the permission of the Court. Learned counsel for the respondent in the present case offered that the respondent would be willing to prepare the paper-book. Such a proposition, unnecessarily advanced in this case, needs no further comment in this order except that this Court would not put any restraint on any litigant if he prepares any such paper-book, but its acceptance would always remain subject to the orders of the Court. Suffice is to conclude that there is no mandatory requirement of preparation of paper-book in relation to a civil first appeal so long it is heard by a Judge sitting alone.

40. It is required to be pointed out that until the year 1996, i.e., until the view came to be expressed in *Munshi Ram's* case (*supra*), paper-books were not prepared in relation to the first appeals when they were placed for hearing before a Judge sitting alone. After *Munshi Ram's* case, the process of preparation of paper-books had been taken up in the appeals having valuation of Rs. 20,000/- or more. Preparation of paper-book in civil first appeal cases until they are heard by the Single Judge having been held to be not necessary herein, all such appeals shall be dealt with by the office as if preparation of paper-book is not necessary except those cases in which there is any specific order of the Court for preparation of paper-book or for compilation of papers in any other form.

41. The cases in which any amount has been deposited for the purpose of preparation of paper-book, its treatment could be considered, if necessary, at the time of final hearing of the appeal.

42. This Court having held that preparation of paper-book in S.B. Civil First Appeal cases when to be heard by the Single Judge is not necessary, no further orders are required on the application (IA No. 9227/2008) as moved in this case that is rendered redundant and is disposed of accordingly.

43. A copy of this order be sent to the Registrar General for ensuring adequate compliance.