

(1996) 12 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil First Appeal No's. 40 of 1986, 08 of 1989, 144 of 1989, 19 of 1990 and 106 of 1995

Munshi Ram and Others

APPELLANT

Vs

Prakash Chand and Another

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (1997) 2 WLC 166 : (1996) 2 WLN 577

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Judgement

R.R. Yadav, J.—In these First Appeals, a preliminary question relating to preparation of paper-books is involved, therefore, this question is being decided by a composite order. First Appeal No. 19/90 shall be treated to be leading case.

2. In First Appeal No. 19/90, the Deputy Registrar (Judicial) was directed on 21.11.96 to submit a report with consultation of Officer-on-Special Duty (Rules) as to why the First Appeal was not posted for dismissal as envisaged under Rule 184 of the Rules of the High Court of Rajasthan, 1952 (hereinafter referred to as "the Rules of the Court").

3. In pursuance of the order dated 21.11.96, the Deputy Registrar (Judicial) has submitted his report on 27.11.96 to the effect that in SB Civil First Appeal cases, practice of preparation of paper-books has never been followed, hence, the said appeal was not listed for dismissal under Rule 184 of the Rules of the Court. In support of his report, he brought to the notice of the Court a decision rendered by the Division Bench of this Court in case of Mansukh Ram Chela of Bhikam Ram Maharaj v. Hema Ram Chela of Shri Jasu Ram, reported in RLW 1963 615.

4. The basic question involved in these appeals is whether the S.B. First Appeals filed before this Court are to be disposed off in accordance with the Rules of the Court as postulated under Chapter XIII or S.B. First Appeal are to be disposed off

according to the practice developed by the office for long time. In my humble opinion, after enforcement of statutory Rules of the Court S.B. First Appeals are required to be disposed off strictly after preparation of paper-books as envisaged under Chapter XIII of the Rules of the Court and practice of non-preparation of paper-books in S.B. First Appeals is to be disapproved where valuation of S.B. First Appeals are Rs. 20,000/-.

5. It is true that right to property has been dethroned from Part III of the Constitution of India and now, right to property has been placed under Article 300A of the Constitution, which means that right to property remains only a constitutional right but exclusion of right of property from fundamental rights to constitutional right, does not necessarily make the property right inferior rights than those conferred under Chapter III of the Constitution of India. Secondly, the preparation of paper- book in first appeals under Chapter XIII of the Rules of the Court has a specific object and nexus in early disposal of the first appeals. In case paper-books in first appeals are prepared it will always be helpful to the Bench for deciding the first appeals expeditiously which is call of the hour of the day. Lastly, the preparation of paper-books in first appeals would always be convenient to the Bench and Bar equally in adjudicating such S.B. First Appeals effectively where valuation of such appeals are Rs. 20,000/-.

6. Before deciding the controversy threadbare, it would be expedient to have a glance over the relevant provisions existing under the Rules of the Court about preparation of paper-books.

7. The expression "paper-book" has been defined under Rule 3 of the Rules of the Court, which means a collection of papers; in original or their copies, transliterations or translations, as the case may be, with fly-sheet, index etc. made up in accordance with the Rules for the use of the Judge or Judges hearing the case.

8. Rule 176 of the Rules of the Court specifically provides that the paper-book in a First Appeal shall consist of a fly- sheet, an index and copies of the papers enumerated therein. Rule 177 of the said Rules postulates that the paper-book in the first appeal shall ordinarily be type-written. Rule 178 of the Rules of the Court envisaged when preparation of paper book to be undertaken by the office of the Registry. Rule 179 of the Rules of the Court contemplates that no paper to be included in paper- book without application by a party to the appeal. Rule 180 of the said Rules provides that the appellant to apply for the copying and typing of all the evidence and papers, whether produced by him or by the respondent to which he wishes to refer at the hearing either for the purpose of showing that the decision appealed against is erroneous or for the purpose of supporting his case.

9. Rule 181 of the Rules of the Court provides that the Deputy Registrar (Judl.) shall as soon as possible after the record in a first appeal has been received, exhibit a notice of its receipt in the Daily Cause List on two consecutive working days. Rule 182 of the said Rules prescribes 30 days limitation for moving an

application for preparation of paper-book from the date when notice of the receipt of record is first published in the Daily Cause List and exhibited on the Notice Board.

10. The aforesaid Rules further provides that where no application for copying and typing has been made within 30 days limitation, the Registrar may on an application made in this behalf if satisfied by affidavit or otherwise, that an application could not be made within the prescribed time, in his discretion he may grant further time for making of such application or preparation of paper-book has already been made, condone the delay in making of such application. Only then, such application shall be deemed to have been made within prescribed time.

11. Rule 184 of the Rules of the Court further envisages that where the appellant fails to make an application as required by Sub-rule (1) of Rule 183 of the said Rules or the respondent fails to make an application as required by Sub-rule (2) of Rule 183 of the said Rules or the appellant or the respondent fails to make the necessary correction in the description of any paper mentioned in Clauses (a) to (g) or (i), as the case may be of Rule 176 when so required by the Editor, the appeal or the cross-objection, as the case may be shall be listed for dismissal before the Court and shall be dismissed unless on an application in writing made in this behalf, the Court for sufficient cause shown grants further time for making of such application or correction. Rule 185 of the Rules of the Court envisages that subject to the provisions of Rule 183 (3) a party may apply for copying and typing of any paper other than the necessary paper or the memorandum of cross-objection even after the prescribed time. Rule 186 of the said Rules contemplates initial deposit of Rs. 50/-towards expenses of paper-book and Rule 187 prescribes for contents of application. Similarly, Rules 188 to 223 prescribe a detailed procedure about preparation of paper-books which cannot be ignored merely on the basis of the practice developed in the office of the Registry.

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 dispose off Civil Appeals. /S.B. or not, as required under Rule 176(2) _____
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_____	FROM 1952 TO 1969 : (i) Upto Ten Thousand S.B. No (ii) Exceeding Rs. 10,000/- D.B. In the matters exceeing Ten Thousand but less than Twenty Thousand no paper-book was required.
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FROM 1969 TO 1976 : Exceeding Twenty Thousand D.B. Yes.

FROM 1976 TO 1982 : Exceeding Fifty Thousand D.B. Yes.

FROM 1982 onwards : All Civil Appeals S.B. Paper-books are not prepared. _____

13. The decision rendered in case of Mansukh Ram 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 Mansukh Ram 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 case 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 Mansukh Ram 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 is 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 Mansukh Ram 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.