

RSA No. 1346 of 2011 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No. 1346 of 2011 (O&M)
Date of decision: 25.9.2019**

Surjit Singh

... Appellant

Versus

Jarnail Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Naresh Kaushik, Advocate
for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant-plaintiff was dismissed by the trial court, vide judgment and decree dated 1.8.2009, and as even the appeal preferred against the said decree failed and was dismissed on 16.11.2010, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff filed a suit for recovery of Rs. 4,27,062/-, along with interest, against the defendant. In brief, the case set out by him was that he was running a shop in grain market at village Jalalpur and was a commission agent. During the course of his business, he would advance money to his customers on interest. For defendant happened to be his customer and was known to him, he obtained loan from the plaintiff on different dates. The entries in this regard were duly recorded in the books of account/ledger maintained by the plaintiff. For, the defendant failed to repay the loan and, thus, the suit.

RSA No. 1346 of 2011 (O&M)

Despite service, defendant did not choose to appear and contest the suit.

However, upon consideration of the matter in issue and evidence on record, both the courts concurrently concluded, as the plaintiff failed to lead any cogent evidence, his claim remained unproved. He failed to mention and specify the dates as also the relevant details qua the loan amount advanced to the defendant on different dates. In other words, the pleadings were completely deficient in this regard. No doubt, in his affidavit (Ex.PW1/A), he had described the dates and the amount of loan obtained by the defendant, but in the absence of necessary and specific pleadings, no evidence could be looked into. Resultantly, it was recorded that in a given situation, no effective decree could be passed. Of course, the defendant did not choose to appear and contest the suit, but the fact remains that onus was upon the plaintiff to lead cogent evidence to substantiate his claim. But, he failed to do so. Likewise, even receipts (Ex. P2 to Ex. P10) as also the entries in the ledger, relied upon by the plaintiff, were of no consequence, as nothing was discernible therefrom, as to for what purpose the loan was obtained. Rather, a perusal of the ledger (Ex.P1) revealed that entries recorded therein pertained to sale of agricultural produce, i.e. paddy. Further, no date of sale was mentioned therein. Similarly, perusal of Ex.P2 to Ex.P9 showed some entries were recorded in the name of Jarnail Singh son of Saradara Singh on different dates in the cash books, but nothing was brought on record to show if these were the books of accounts maintained by the plaintiff in due and regular course of his business. That being so, the only and the inevitable conclusion the courts below could reach was: claim of the plaintiff remained unproved. Upon being pointedly asked, learned counsel

RSA No. 1346 of 2011 (O&M)

for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

**(ARUN PALLI)
JUDGE**

September 25, 2019

AK Sharma

Whether speaking / reasoned:

YES

Whether Reportable:

YES/NO