

**(2017) 10 CAL CK 0005**  
**In the Calcutta High Court**  
**Case No : 2675 of 2015**

|                                            |            |
|--------------------------------------------|------------|
| M/s. Green Orbit Apparels Pvt. Ltd. & Ors. | APPELLANT  |
| Vs                                         |            |
| M/s. Kasturi Marketing                     | RESPONDENT |

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**Date of Decision :** 02-10-2017

**Acts Referred:**

[Code of Civil Procedure, 1908](#), [Order 7 Rule 11](#) -  
[Negotiable Instruments Act, 1881](#), [Section 138](#) - Dishonour of cheque for insufficiency, etc., of funds in th

**Citation :** (2017) 10 CAL CK 0005

**Hon'ble Judges :** Siddhartha Chattopadhyay

**Bench :** SINGLE BENCH

**Advocate :** M.C. Ghosh, V. Tibrewal, Pijush Chaturbedi, Anirban Mitra, Shib Kumar Sharda, Prasenjit Saha, Nipa Mullick

**Final Decision :** Dismissed

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## Judgement

1. Challenging the legality and validity of the order dated 23.03.2015 passed by the learned 3rd Judge, City Civil Court at Calcutta the defendant/petitioner has filed this revisional application contending inter alia that the impugned order is bad-in-law. According to him, the present opposite party has initiated a criminal case against him under Section 138 of N. I. Act. The present petitioner contested the said case and it was amicably settled by and between the parties and accordingly a sum of Rs.11,76,286.60/- along with interest, charges, costs component assessed at Rs.16,51,835.40/- was to be repaid to the opposite party in respect of entire dues. Since that has been complied with by giving a demand draft dated 12.09.2014, so the money suit instituted by the plaintiff/opposite party is not maintainable. So they filed an application under Order VII Rule 11 of Code of Civil Procedure before the Trial Court but the Trial Court without adhering to the principles of law had rejected his application.

2. At the time of hearing, learned Counsel appearing on behalf of the opposite party/plaintiff contended that the learned Trial Court has made an elaborate

discussion and has come to a correct finding which does not require any interference.

3. According to the present petitioner/defendant, at the time of filing of the plaint, the plaintiff never disclosed this aspect in his plaint and he has suppressed many things and for which the petition under Order VII Rule 11 ought to have been allowed.

4. It is perhaps needless to say that if on a meaningful and not formal reading of the plaint it is manifestly vexatious, meritless and if the plaint does not speak of a clear right to sue, the trial Court should exercise its power under Order VII Rule 11 of Code of Civil Procedure. In the instant case, it appears that after filing of the money suit bearing No. M.S. 12765/2014, the plaintiff has prayed for an amendment and the said amendment was allowed by the learned Trial Court. It is perhaps needless to say that when an amendment is allowed in respect of any pleading in that case the contents of the amendment would merge with the original plaint. Therefore, by mentioning the same an amendment was sought for and reducing the claim amount. In this way, the plaintiff has shown his bona fide. The learned trial Court has also observed that the principles of res judicata is not applicable in respect of two different types of cases. On a bare perusal of the plaint read with the amendment, it does not appear that the plaintiff omitted to mention a clear right to sue nor anything is there which goes to suggest that the suit is ex-facie barred by any law.

5. Considering the circumstances, I am of the view that there is no mistake committed by the learned trial Court. Accordingly, the revisional application stands dismissed. Parties to their bear their own cost. The trial Court must expedite the trial.

6. Let a copy of this judgment be sent to the learned Court below for his information and taking necessary action in accordance with law.

7. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.