

**(2011) 10 DEL CK 0097**

**In the Delhi High Court**

**Case No :** CM (M) No. 1225 of 2011 and CM No. 19387 of 2011

Thakur Dass Wadhwa

APPELLANT

Vs

M/S Coromandal Agrico Pvt. Ltd.

RESPONDENT

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**Date of Decision :** 20-10-2011

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 10

**Citation :** (2011) 10 DEL CK 0097

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** Sanjay Shangari, for the Appellant; Nemo, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Indermeet Kaur, J.—Order impugned is the order dated 22.09.2011 vide which the application filed by the defendant u/s 10 of the CPC (hereinafter referred to as the "Code") had been dismissed.

2. The case set up by the defendant in his application u/s 10 of the Code was that he had filed two suits at Abohar, Punjab; issues arising in the said suits are common and verbatim the issues raised in the present suit; present suit as also the earlier two suits are suits for recovery and they also relate to the transaction conducted during the same period; present suit filed in Delhi is thus liable to be stayed. The impugned order had correctly construed the issues which were raised in the suits filed by the defendant at Abohar, Punjab as also the suit filed by the plaintiff in Delhi. It is not in dispute that out of two suits filed by the defendant at Abohar, Punjab, one suit had been decreed and one suit had been dismissed. The Court had noted the essential ingredients of the provision of Section 10 of the Code; it had noted that in the present suit the plaintiff was seeking recovery of an amount against the defendant which was not the subject matter of the suits before the court at Abohar, Punjab; it is also an admitted position that no counter claim had been filed by the plaintiff in the said two suits at Abohar, Punjab; thus the question whether the plaintiff is entitled to recover

any money from the defendant could not be the subject matter of those two suits and the suit filed by the plaintiff in Delhi was clearly maintainable. Application u/s 10 of the Code had been rightly dismissed. Impugned order suffers from no infirmity.

3. Dismissed.