

KABC170023942025



**IN THE COURT OF LXXXV ADDL. CITY CIVIL & SESSIONS
JUDGE, AT BENGALURU (CCH-86) (Commercial Court)**

THIS THE 6th DAY OF FEBRUARY 2026

**PRESENT:
SRI.ARJUN. S. MALLUR. B.A.L.LL.B.,
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com.OS.No.1010/2025

PLAINTIFF:

M/S Manju Electricals

Having Its Office At No.23,
3rd Floor, 5th Main Road,
Bhuvaneshwari Nagar, Sultanpalya,
Bangalor-560 032.

Represented By Its Partner
Sri. S Manjunathan.

(Represented by Sri. Siddu M Kenduli, Advocate)

: Versus:

DEFENDANT:

1. M/S Quality Quarters Hospitality

No.26, Ground Floor,

Godrej Centrl Hebbal,
Byatarayanapura,
Bangalore-560 092.
Represented By Managing Partner
Sri. K Balakrishna.

Also At

2.M/S Quality Quarters Hospitality,
Godrej Central, Kodigehalli,
Hebbal Main Road,
Bangalore-560 092.
Represented by Managing Partner
Sri. K Balakrishna.
(Represented by Sri.Subrahmanya P D , Advocate)

IA.NO.IV

Applicant/Plaintiff: M/S Manju Electricals

(Represented by SriSiddu M Kenduli , Advocate)

V/s

Opponent/Defendant:M/S Quality Quarters Hospitality

(Represented by Sri.Subrahmanya P D, Advocate)

(i)	Provisions under which the application is filed	Order XXIII Rule 1(3) of CPC
(ii)	Relief sought for	Seeking permission to withdraw the suit with liberty file a fresh suit on the same

		cause of action upon rectifying the formal defect in the suit.
(iii)	The date on which the application is filed	30.01.2026
(iv)	Number of the application	I.A.No.4
(v)	The date on which the objections are filed by different opponents	-
(vi)	The date on which the orders were passed on the said application	06.02.2026

ORDERS ON IA.NO.VI

I.A.No.4 is filed by the Plaintiff under Order XXIII Rule 1(3) of CPC seeking permission to withdraw the suit with liberty to file a fresh suit on the same cause of action upon rectifying the formal defect in the suit.

2. It is contended by the plaintiff that the plaintiff M/s Manju Electricals is a proprietary concern and it is run by the proprietor Smt. Aruna Bhoopalan. However at the time of filing of the suit due to inadvertence and due to lack of relevant material regarding the legal status of the plaintiff it has been wrongly mentioned as a partnership firm represented by its partner Mr. S Manjunathan. It is

submitted that the proprietary concern has no right to file the suit in its name and the said mistake is a bonafide mistake and a legal defect which if not cured the suit is bound to fail and therefore the liberty is sought for withdrawing the suit and refiling the same after curing the legal defect or disability. Hence the application.

3. The learned counsel for the defendant has not filed any objections but orally submitted that suitable cost may be imposed on the plaintiff for having improperly filed the suit and made the defendant to face the litigation.

4. Heard the learned counsel appearing for the plaintiff. Perused the entire material on record.

5. The points for consideration are:-

1) Whether the plaintiff has made out justifiable ground for granting leave to withdraw the suit with liberty to execute fresh suit on the same cause of action after curing the technical defect?

2) What order?

6. My answer on the above point is as under:

Point No.1: **In the Affirmative.**

Point No.2: As per final order for the following

REASONS

7. **POINT NO.1**:- The plaintiff has filed this suit for recovery of a sum of Rs.19,00,000/- with interest thereon. In the cause title the plaintiff is described as M/s Manju Electricals represented by its partner S Manjunathan. The defendants have rendered appearance and have also filed written statement raising several defences. During the course of hearing and upon perusal of the documents it has been revealed that M/s Manju Electricals is not a partnership firm but it is a proprietary concern. Under the present application the plaintiff seeks to withdraw the suit and refile the same on the same cause of action by curing the legal defects.

8. Order XXIII Rule 1(3) of CPC provides that where the Court is satisfied that the suit must fail by reason of formal defect then the Court may grant permission to the plaintiff to withdraw the suit with liberty to institute a

fresh suit with respect to the same subject matter on the same cause of action. It is settled position of law that the proprietary concern has no legal entity and it cannot sue in its name whereas it can only be sued in its name. For the purpose of filing the suit it has to be filed in the name of the proprietor representing the proprietary concern and not the other way round. Therefore even if the plaintiff was to succeed in proving that the defendant is liable to pay the suit claim, because of the defect and legal disability, the suit is bound to fail ultimately. The said defect or disability is not an incurable defect or disability and the same can be cured by withdrawing the suit and refiling the same in the proper. The cause of action for the suit is alleged to have arose on 13.07.2024 when the purchase orders were placed by the defendant. Therefore withdrawing the suit with liberty to refile the same on same cause of action would still bring the suit within the period of limitation and under these circumstances in the light of the legal disability existing as of now I deem it just and proper to permit the plaintiff to withdraw the suit with liberty to refile the same on the same cause of action but the plaintiff is bound to compensate the defendant by way

of paying costs. Accordingly I answer Point No.1 in the **Affirmative.**

9. POINT NO.2:- For the aforesaid reasons, I pass the following:

ORDER

I.A.No.4 filed by the plaintiff U/o.XXIII Rule 1(3), of CPC is **allowed on cost of Rs.5,000/- payable to the defendant.**

Plaintiff is permitted to withdraw the suit with liberty to institute fresh suit on the same cause of action by paying the cost as above.

(Dictated to the Stenographer Grade-III, transcribed by her, corrected and then pronounced by me in open court on this the **6th day of February, 2026**)

(ARJUN. S. MALLUR)
LXXXV Addl.City Civil & Sessions Judge,
Bengaluru.