IN THE COURT OF PRINCIPAL DISTRICT &
SESSIONS JUDGE, BELAGAVI

Dated this the 24th day of June, 2025

PRESENT

Sri T. N. Inavally, B.A.L., LL.B.
Principal District & Sessions Judge,
Belagavi

Com. OS No.29/2021

Plaintiffs: 1) Sri Vishal S/o Revappa Boragi
Age: 26 years, Occupation: Contractor,
R/o: 3rd Gate, Mango Meados,
Belagavi.

2) Sri Basavaraj Mahantesh Patil
Age: 26 years, Occupation: Contractor,
R/o: Mahantesh Nagar,
Belagavi.

(Represented by Sri C.A. Totagi/ Sri S.B. Patil, Advocates)

Vs.

Defendants: 1. Mr. Prasanna Dayanand Kesti
Age: 35 years, Occupation: Business
R/o: Opp: Kannya High School,
Sankeshwar, Taluk: Hukkeri,
District: Belagavi.

2. Mr. Prasad Arvind Kesti
Age: 22 years, Occupation: Business,
R/o: Saraf Residency, B- Wing,
2nd Floor, Flat No.202, Tilakwadi,
Belagavi.

(Represented by Sri S.D. Patil, Advocate)

i.	Provision under which the application is filed	U/O VI R-17 r/w S-151 of CPC
ii.	Relief sought for	Amendment of plaint
iii.	The date on which the application is filed	08.06.2022
iv.	Number of the application	IA No.2
v.	The date on which the objections are filed by different opponents/ defendants No.1 and 2	30.06.2022
vi.	The date on which the orders was passed on the said application	24.06.2025

ORDERS ON IA No.2

This application- IA No.2 is filed by the plaintiffs under Order VI Rule 17 read with Section 151 of Code of Civil Procedure (‘CPC’ for short) praying for an order to permit them to carry out necessary and consequential amendments to the plaint as sought for, in the interest of justice.

2. Vishal S/o Revappa Boragi, the plaintiff No.1 has filed his affidavit along with the application submitting that after filing the suit, he noticed some errors in the plaint, which require rectification and amendments. The nature of accounts of the defendants maintained by the plaintiffs and the last date of transactions were not averred in the plaint. Hence, the said

fact should be added. The proposed amendments do not change the nature and character of the suit in any manner and no new cause of action will arise. If the proposed amendments are not allowed to be carried out, great hardship will be caused to the plaintiffs. The omissions and errors in the plaint are not intentional. The same was due to the negligence on the part of the advocate, who initially drafted the plaint. The proposed amendments are quite bona fide. The suit is yet to be numbered and the suit summons to the defendants are yet to be issued by this Court and hence, no hardship will be caused to the defendants, if the proposed amendments are allowed. Therefore, the plaintiff No.1 has prayed for allowing the application in the interest of justice.

3. In pursuance of suit summons on the defendants, they have appeared through the counsel and filed their written statement and also filed objections in detail to the application submitting that the application is misconceived and untenable

in the eye of law and same is liable to be dismissed. The contents of the affidavit filed along the application are false and same are denied by the defendants. The proposed amendments that the plaintiffs are carrying out their business activities in the name and style as ‘Boragi Engineering and Constructions’ and the proposed amendment that Hukkeri Rural Electrical Co-operative Society Limited and the concerned properties are non agriculture are false. It is also false that the plaintiffs are ready to complete the execution of electrical work. The present application is filed at the belated stage and same is barred under law. The proposed amendments intend to change the entire nature of the suit and cause of action, which are not permissible in the eye of law. The plaintiffs only to drag on the proceedings and to cause delay to the proceedings has filed this application. The plaintiffs are not diligent in prosecuting the case. The plaintiffs have come up with the application to cover up the lacuna crept in the pleadings. The plaintiffs by repeating the facts, has filed the schedule of proposed amendments and hence, the proposed pleadings are not relevant. The proposed amendment sought for is camouflage in nature and such type of amendment application is to overcome the defects caused in the plaint pleadings. Therefore, the application is liable to be rejected. The suit itself is not maintainable in the eye of law, as it is not filed after determining the specified value of the commercial dispute and by way of amendment, it cannot be rectified. Therefore, the defendants No.1 and 2 have prayed for dismissal of the application with costs in the ends of justice.

4. Heard the arguments of the learned counsel for the plaintiffs and also the learned counsel for the defendants No.1 and 2 on the application. Perused the relevant materials on record. Now the points that arise for consideration of this Court are:

1. *Whether the plaintiffs have made out any sufficient ground to permit them to amend the plaint as sought for in the application?*
2. *What order?*

5. After hearing the arguments of the learned counsel for both the parties and on considering the relevant materials on record, my findings on the above points are as hereunder:

Point No.1	:	In the negative
Point No.2	:	As per final order
		For the following:

REASONS

6. **POINT No.1:** The plaintiffs have filed the suit on hand for the relief of decree of recovery of money of Rs.29,02,302/- with interest at 18% per annum from 16.10.2017 till realization on the contention that the defendants No.1 and 2 and the plaintiffs had discussion regarding the development of the land bearing Sy.No.173/6 and 173/7 to form a residential layout as Kesti Empire. The plaintiffs executed the entire development/ civil work. The plaintiffs executed major portion of work amounting to Rs.76,77,000/- and the defendants No.1 and 2 paid a total amount of Rs.47,70,000/-. The plaintiffs brought to the notice of the defendants to obtain necessary permission from KEB. The non

execution of the part of the road and electricity connection remained, because of non performance of the defendants. Hence, the plaintiffs have sought for recovery of remaining amount.

7. However, as submitted by the learned counsel for defendants and also as forthcoming in the objections filed by the defendants, it would be clear that now the plaintiffs have come up with the present application seeking amendment of the plaint by adding some more averments to the plaint. The amendments sought for by the plaintiffs is to insert to plaint at Para III(1) that:

> *‘The plaintiffs have also carried out their business activities under the name and style as ‘Boragi Engineering and Construction’.*

Further, the plaintiffs have sought for substituting the words ‘Hukkeri Rural Electrical Board’ by the words:

> *‘Hukkeri Rural Electrical Co-operative Society Limited’.*

The plaintiffs have also sought for substituting the averments in the plaint that:

> *'Plaintiffs have also ready to complete the execution of the electrical work like erecting the poles, transformers and to put the electrical wire on the pole. But the said work of execution of electric work remained unexecuted because till date because defendants have not obtained permission from the concerned department.'*

Further, existing Para III(5) of the plaint is sought to be substituting by the following words that:

> *'Plaintiffs have already executed major portion of the work amounting to Rs.76,77,000/-. Plaintiffs were ready to execute the remaining work also. But due to the above stated difficulties, Plaintiffs could not complete the remaining work. Thereafter, the plaintiffs earnestly requested the defendants to facilitate Plaintiffs to execute the remaining work as narrated above immediately by performing defendants part of contract (filling the old well with mud etc. and to bring it to ground level, and to obtain the necessary permission for electricity works.)'.*

The plaintiffs have also sought for substituting the existing Para III(6) of the plaint averments with the words:

> *'The entire transaction of development of Kesti Empire was oral and based upon the terms of the oral agreement only. In the month of November 2016, Defendants and Plaintiffs have had a discussion and the terms of the oral agreement regarding the cost of execution of the civil work etc. were reduced into writing in the form of "Consent Deed" dated 19th November 2016 and therefore, the said Consent Deed was part of the entire transaction of development of KESTI EMPIRE. As per the oral*

> *agreement and as per the said Consent Deed dated 19th November 2016, it was agreed that the plaintiffs had to complete the entire execution of the civil work of the development of KESTI EMPIRE for the total consideration of Rs.90,00,212/- (Ninety Lakh Two Hundred Twelve Only), including all taxes and cesses.'.*

Further Para III(7), the figure Rs.76,77,000/- is sought to be substituted as Rs.76,79,302/-. The para III(7) is sought to be substituted by the words:

> *'Plaintiffs have already invested about 30 lakhs of rupees excess of the payment made by Defendants'.*

Moreover, after the end of existing Para III(7) the following sentence is sought to be inserted:

> *'The defendants were maintaining a mutual, open and current account with the plaintiffs, during the course of the entire transaction. The last transaction and the last entry made in the said accounts was on 20.03.2017.'*

Further, in Para III(8) of the plaint the work KEB is sought to be substituted by the words:

> *'M/s Hukkeri Rural Electrical Co-operative Society'.*

Further, Para III(9) is sought to be substituted by the words:

> *'The non execution of the part of the road and electricity connection remained, because of non performance of Defendants' part of contract. Therefore, Defendants have to make the payment of remaining amount Rs.29,09,302/-*

> *to Plaintiffs, for the work already done by the Plaintiffs. Defendants are also to make the payment of remaining balance of Rs.13,20,910/- as per the terms of the agreement. Defendants have already paid Rs.47,70,000/- to the plaintiffs and the defendants are liable to pay a sum of Rs.29,09,302/- in respect of the work already executed and remaining amount of Rs.13,20,910/- etc. to be paid to Plaintiffs after formation of the remaining part of road and electricity connection. The civil work amounting to Rs.76,79,302/- was executed about 2 years back. Plaintiffs have approached Defendants many number of times and requested for the performance of their part of contract and also requested for the payment of Rs.29,09,302/-, which is due with respect of the work done by Plaintiffs (after deducting the amount of Rs.47,70,000/- paid by the Defendants till 14.10.2016). But in spite of repeated requests by the plaintiffs, Defendants failed to make the payment of the said due amount and also failed to perform their part of contract of filling the old well with mud and obtaining the approval of M/s Hukkeri Rural Electrical Co-operative Society Limited, which the electricity distribution licensee for the area. This being the position, in order to dupe the money expended by the Plaintiffs in developing the KESTI EMPIRE, Defendants have got completed remaining work amounting to around Rs.14 Lakhs out of the total cost of the project of Development amounting to Rs.90,00,212/-.'*

In Para III(10) at 5th line the figure 'Rs.29,02,302/-' is sought to be substituted by the figure 'Rs.29,09,302/-'. Further, in Para III(10) at 8th line, figure 'Rs.29,02,302/-' is sought to be substituted by word figure 'Rs.30,00,000/-'.

In Para III(10) at last line, the figure Rs.29,02,302/- is substituted as 'Rs.29,09,302/-+interest of Rs.14,30,673/-

aggregating to Rs.43,39,975/- (with interest from 01.04.2017 till 31.08.2019 @ 18% per annum, compounded annually), aggregating to Rs.43,39,975/-'.

Further, after Para III(10) a new Para III(11) and III(12) are sought to be added as:

> *'11. The plaintiffs submit that subsequently, the defendants terminated the oral contract confirmed by Consent Deed dated 19.11.2016 and the Defendants caused to execute the electrification work in KESTI EMPIRE through third party/ parties.'*
>
> *'12. The last entry made on the mutual, open and current account maintained by the defendants with the plaintiff was on 20.03.2017 with a debit balance of Rs.29,09,302/-. The defendants are liable to pay the balance amount of Rs.29,09,302/- with 18% interest from 01.04.2017 (i.e., the close of the year in which the last item admitted or proved is entered in the account) till the date of actual payment to the plaintiffs. Since the amount claimed by the plaintiffs from the defendants are being arises due to business transactions, the rate of interest claimed by the plaintiff is quite reasonable and the same is a business transaction.'*

Further, the existing Para III(11) of the plaint is sought to be re numbered as Para IV as follows:

> *'IV. CAUSE OF ACTION: The cause of action to file the suit arose in the month of May 2016 and thereafter in the month of November 2016 and thereafter on each month of the year 2017 and on 31.03.2017, when the close of the year in which the last item is entered in the mutual, open*

and current account of the defendants maintained with the plaintiffs; and thereafter on 27/28.02.2018 when the Demand Notice was addressed and served upon the Defendants demanding the Defendants to make the payment of Rs.30,00,000/- and the same also arose when the Defendants have not paid the said amount.'

The existing Para 12 of the plaint is sought to be re numbered as Para V substituting the words:

'V SUIT VALUATION: The plaintiffs value the relief claimed in the suit as Rs.29,09,302/- + interest of Rs.14,30,673/- aggregating to Rs.43,39,975/- (with interest from 01.04.2017 till 31.08.2019 @ 18% per annum, compounded annually), for the purpose of jurisdiction and Court Fee and a total Court Fee of Rs.1,85,624/- is being paid on this plaint as per Section 21, Article I, Schedule I, of the K.C.F.S.V. Act, 1958.'

The existing Para III(13) is sought to be re numbered as Para VI and the existing Para III(14) of the plaint is sought to be re numbered as Para VII and it is sought to be amended as:

'VII R E L I E F S

WHEREFORE, the Plaintiffs pray for a judgment and decree in their favour and against the Defendants, jointly and severally for the following reliefs.

a) For a permanent mandatory injunction directing the Defendants, jointly and severally, to pay a sum of Rs.43,39,975/- (Rupees Forty Three Lakhs Thirty Nine Thousand Nine Seventy Five only) in cash, to the plaintiffs.
(This relief is valued at Rs.1,85,624/- for Court Fee and Jurisdiction under Section 21, Article I, Schedule I of the K.C.F.S.V. Act, 1958.)

b) For pendent lite interest from the date of the suit till the date of the decree;

c) For interest at the rate of 18% per annum on the decreetal amount from the date of the decree till the date of actual realization of the decreetal amount.

d) For cost of the suit and;

e) For such other relief, as this Hon'ble Court deems fit and proper to grant, in the circumstances of the case.

(Court fee for the reliefs claimed under (b) to (d) will be paid after the passing of the decree in favour of the plaintiffs, if required.)'

These amendments sought for by the plaintiffs would show that now the plaintiffs have tried to change the entire averments and also relief sought for in the plaint. Moreover, as pointed out by the learned counsel for defendants, there is no para mentioned in plaint as para III. Therefore, the amendment sought for in the application is not in accordance with the paras mentioned in the plaint.

8. The reasons mentioned in the application by the plaintiff No.1 is that the omissions and error in the plaint are due to negligence of the Advocate, who initially drafted the

plaint and filed suit and such commission and omission of the Advocate should not affect the client adversely for no fault of the party. There is absolutely no dispute that the fault or error of the counsel should not cause inconvenience to the party. But, in the case on hand, the counsel cannot draft plaint for himself without the instruction of the party. Hence, the contention of the plaintiffs in the application that the error and omissions in the plaint are due to negligence on the part of their counsel, who initially drafted the plaint and filed the suit, does not have legs to stand on the facts of the case.

9. Moreover, as submitted by the learned counsel for the defendants, the amendment sought for in the application would show that the plaintiffs now want to change each and every aspects of the plaint averments. The cause of action mentioned in the plaint is sought to be change by way of amendment. The suit claim is also sought to be changed by changing the portion of the plaint regarding averments made regarding suit

valuation. Moreover, now the plaintiffs have come up with the contention that they are carrying out their business in the name and style as ‘Boragi Engineering and Constructions’, even though it is absolutely not their contention at the time of filing of the suit. Actually the suit is filed by the plaintiffs in their individual capacity and not as firm or company.

10. Moreover, after the defendants have appeared and filed their written statement in detail, the plaintiffs have come up with the present application seeking amendment for changing almost all of the averments made in the plaint. Hence, as submitted by the learned counsel for the defendants, such amendment cannot be allowed. The proposed amendment changes the nature of the suit and also cause of action of the suit. Such amendment is not permissible under law. Therefore, the plaintiffs have failed to make out any sufficient ground, much less any ground to permit them to amend the plaint as

sought for in the application and consequently, the point No.1 is answered in the negative.

11. **POINT NO.2:** From the discussions made herein above, it is clear that the application is liable to be dismissed. In the result, I proceed to pass the following:

ORDER

The application-IA No.2 filed by the plaintiffs under Order VI Rule 17 R/w Section 151 of Civil Procedure Code is hereby dismissed.

In the circumstances, there shall be no order as to costs.

(Dictated to the Stenographer transcribed by her, corrected and then pronounced by me in Open Court on this ***the 24th day of June, 2025****)*

(T. N. Inavally)
Principal District & Sessions Judge,
Belagavi