

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 135 of 2018

Virendra Agrawal, S/o. Late Hari Shankar Agrawal, Aged About 55 Years,
R/o. Patel Ward No.15, Dongargarh, District Rajnandgaon, Chhattisgarh.

---- **Petitioner**

Versus

Rajendra Kumar Mahule, S/o. Late Pannalal Mahule, Aged About 55
Years, R/o.Kalkapara Opposite Shala No.3 Dongargarh, District
Rajnandgaon, Chhattisgarh.

---- **Respondents**

For Petitioner : Mr. P.K.Tulsyan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

15.02.2018

Heard

1. This petition is against the order dated 04.01.2018 whereby an application preferred for amendment by the plaintiff was dismissed.
2. Learned counsel for the petitioner submits that no amendment for the prayer has been made and the prayer remained as it is, but then the Court below misread the application and without any reason has stated that it will change the nature of the suit.
3. Perused the application moved under Order 6 Rule 17 of C.P.C. wherein reference of second agreement has been made that a subsequent agreement was executed and the earlier payment made in an agreement was said to be adjusted in such by second agreement. Thereby, it may amount to alteration of the agreement as per Section 62 of the Indian Contract Act, 1872. Perusal of the pleadings and the amendment, it appears that additional pleading is sought for so as to bring on record the fact of other agreement.

4. In view of the fact that there is no amendment in the prayer has been made and the suit primarily appears to be for return/recovery of the amount paid over an agreement; therefore, *prima facie* it do not appear that it will change the nature of the suit specially when no amendment in the prayer has been sought for. In view of the same, the order dated 04.01.2018 is set aside. Consequently, the amendment sought for is allowed. Necessary amendment may be carried out within a period of two weeks from the production of this order.
5. Accordingly, the petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge