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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 1673 of 2017 (O&M)
Date of Decision: 21.11.2018

Iqbal Singh and another

-Petitioners

Vs

Surjit Kaur and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Parvinder Singh, Advocate,
for the petitioners.

Mr. Munish Gupta, Advocate,
for respondent No.1.

RAJ MOHAN SINGH, J. (ORAL)

Petitioners are aggrieved of order dated 06.09.2016 passed by Additional Civil Judge (Senior Division), Garhshankar accepting the application filed by the plaintiff for striking off amended written statement on the ground that the same is beyond the scope of amended plaint.

Perusal of the record would show that the plaint filed by the plaintiff was allowed to be amended thereby seeking to delete head note no.1 and incorporate para (a). Prayer clause in respect of first alternative relief was also allowed to be deleted and para (b) was allowed to be inserted. Similarly, para no.1 of the plaint was allowed to be deleted and para (c) was allowed to

be inserted.

Learned counsel for the petitioners submits that besides deleting para no.1 of the plaint, plaintiff has also deleted para no.3 of the plaint. In the amended written statement, preliminary objection no.1 was taken to the effect that unauthorized amendments have been made in the plaint and the plaint requires to be rejected. Thereafter, the plaintiff filed an application for scoring off amended written statement filed by defendants No.1 and 2. However, in paras no.4 and 5 of the application, prayer was made that the amended written statement filed by defendants No.1,2 and 5 be scored off.

Learned counsel further submits that written statement filed by defendant No.5 was for the first time and the same was not in the context of allowing any amendment, rather she was allowed to be transposed from plaintiff to defendant No.5 vide order dated 30.09.2015.

The Additional Civil Judge (Senior Division), Garhshankar vide the impugned order has accepted the application and allowed scoring off amended written statement filed by defendants No.1,2 and 5. The Court has not pointed out as to which of the paragraph in the amended written statement has gone beyond scope of amended plaint allowed by the Court. The order appears to be non-speaking on material

particulars.

Learned counsel for respondent No.1 submits that trial Court be directed to take into consideration the scope of amended written statement corresponding to the plea taken by the plaintiff in the amended plaint.

The order passed by the trial Court on the application for re-calling thereby entitling the defendants to file amended written statement would not be of any consequence because the inconsistency (if any) in the written statement vis-a-vis the amended plaint has not been pointed out by the plaintiff in the application nor the same has been considered by the trial Court in the impugned order.

It would be in the fitness of things in case trial Court is directed to re-visit the order *de-hors* the order dated 02.01.2017 vide which filing of amended written statement by the defendants was allowed.

The trial court shall re-visit the impugned order in accordance with law.

Disposed of.

21.11.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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| 1. | Whether speaking/reasoned | : | Yes/No |
| 2. | Whether reportable | : | Yes/No |