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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO 550/2018 & CAV 1132/2018 & C.M. No.51048-51050/2018**

PHAFAG AG

..... Appellant

Through: Mr. Abhinav Agnihotri and
Ms.Purva Kohli, Advs.

versus

RAJESH LUTHRA & ANR

..... Respondents

Through: Mr. Samar Singh Kachwaha,
Adv. for R1.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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05.12.2018

CAV 1132/2018

1. Since Mr. Samar Singh Kachwaha, learned counsel for the caveator/respondent No.1 has put in his appearance, the caveat stands discharged.

C.M. No.51048-51049/2018 (exemption)

2. Allowed, subject to all just exceptions.

3. The applications are disposed of.

FAO 550/2018 & C.M. No.51050/2018 (for additional documents)

4. The order dated 18.07.2018 passed by the Court of learned Additional District Judge-05, Patiala House Courts, New Delhi ('ADJ') in Civil Suit No.58429/2016, dismissing the application of the appellant for setting aside the *ex parte* proceedings

against the appellant/company, is the subject matter of challenge in this appeal.

5. At this stage, both the learned counsel submit that in fact the appellant company was proceeded against *ex parte* by the learned ADJ vide order dated 28.09.2016. The suit was never adjudicated upon and is still pending. The appellant filed an application for setting aside the *ex parte* proceedings under the wrong provision of law i.e. under Order IX Rule 13 of the Code of Civil Procedure, 1908 ('CPC') instead of Order IX Rule 7 CPC. Eventually, the application was dismissed by the impugned order.
6. The impugned order has been passed by the learned ADJ dismissing the application of the appellant for setting aside the *ex parte* proceedings and thus it is under Order IX Rule 7 of CPC which in turn is not appealable under Order 43 Rule 1 of CPC.
7. At this stage, learned counsel for the appellant seeks permission to withdraw the appeal with permission to have recourse to the appropriate remedy which is available to them in accordance with law.
8. As such, the petition along with application, being C.M. No.51050/2018, is dismissed as withdrawn with such liberty.

VINOD GOEL, J.

DECEMBER 05, 2018/sdp