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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1017/2018, CM APPL. 35184-35186/2018, CM APPL.
38309/2018, CM APPL. 48841/2018

GULAM QUTUBBUDIN SABRI Petitioner
Through: Mr. C.S. Rathour, Advocate.

versus

KENDRIYA VIDYALYA SANGATHAN & ORS ... Respondents
Through: Mr. S. Rajappa, Advocate for R-1, 3
& 4.
Ms. Shobhana Takiar, Adv for R-2.
Mr. Vipul Pankaj Sanghi, Adv for R-5.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **08.01.2019**

At the outset, it is submitted on behalf of all the respondents that the petitioner ought to have availed the remedy in terms of Order XLIII Rule 1 sub clause (r) of the CPC, 1908 (as amended) inasmuch as the petitioner seeks to assail the impugned order dated 31.07.2018 in CS No.566/2018 vide which an application under Order 39 Rule 1 & 2 of the CPC filed by the petitioner herein as plaintiff to the said suit CS No.566/2018 was declined.

Apparently, a bare perusal of Order XLIII Rule 1 sub clause (r) of the CPC, 1908 (as amended) indicates that an appeal can clearly be filed in terms of the said provision against an order made under the provisions of Order 39 Rule 1 & 2 of the CPC.

Learned counsel for the petitioner at this stage submits that the petitioner seeks to withdraw the present petition seeking liberty to seek redressal in accordance with law by filing the appeal under Order XLIII Rule 1 sub clause (r) of the CPC which is so granted and the petition is dismissed as withdrawn with liberty granted to the petitioner to file such appeal within a period of 15 days from the date of this order, till which date the interim protection granted vide order dated 30.08.2018 shall continue.

Copy of the order be given Dasti, as prayed to all parties.

ANU MALHOTRA, J

JANUARY 08, 2019/NC