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

+ **CM(M) 93/2023**

**HDFC BANK LTD**

..... Petitioner

Through: Mr. Darpan Wadhwa, Senior  
Advocate with Mr. Sanjeev Pathak  
and Mr. Rahul Gupta, Advocates.

versus

**AZAD KALAM**

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**ORDER**

**24.01.2023**

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**[ The proceeding has been conducted through Hybrid mode ]**

**CM APPL. 3059/2023 (for exemption)**

1. Exemption is allowed, subject to all just exceptions.
2. Application stands disposed of.

**CM APPL. 3058/2023 (for exemption)**

3. This is an application seeking exemption from filing certified copy of the impugned order dated 22.11.2022.
4. Exemption is allowed, subject to all just exceptions.
5. However, the petitioner is directed to file the certified copy of the impugned order dated 22.11.2022 within six weeks from today.
6. The application stands disposed of.

**CM(M) 93/2023 & CM APPL. 3057/2023 (for stay)**

7. Petitioner challenges the order dated 22.11.2022 passed by the

**CM(M) 93/2023**

1



Executing Court in Execution Petition No.121/2022, **HDFC bank Ltd. vs. Azad Kalam**, whereby the execution sought of the award was dismissed on the ground that the Execution Petition itself is not maintainable for violating Section 12(5) and Schedule 7 of the Arbitration and Conciliation Act, 1996, as amended in 2015 on various grounds.

8. Mr. Darpan Wadhwa, learned Senior Counsel appears for the petitioner and submits that it is well settled that the Executing Court cannot go beyond the decree and in the present case vide the impugned order, the executing Court has done precisely that.

9. Learned Senior Counsel submits that not only that the Executing Court has gone beyond the decree, it has also termed the said Execution Petition as an abuse of “Court Process” and has burdened the petitioner with the costs of Rs. 25,000/- which is unfair and unwarranted in the facts of the present case.

10. Learned Senior Counsel also submits on the basis of various judgments rendered by other High Courts that so far as the Arbitration Act is concerned, an award remains an award and doesn’t change its character merely because an Execution Petition is filed under the provisions of Section 36 of the Arbitration and Conciliation Act, 1996 (referred to as the “Act”).

11. Learned Senior Counsel also submits that on the basis of the impugned order, there are many such Execution Petitions which are being dismissed with similar petitions observations and identical costs, which may be burdensome upon the petitioner.

12. Learned Senior Counsel further submits that the petitioners are



Banks/ Non-Banking Financial Corporations (NCFCs) and are recovering their legal and lawful dues from the respondents and the manner in which the learned Executing Court has dismissed the Execution Petition, reflects the manner in which the Executing Court has perfunctorily decided the issue, by entering into a realm, which was not vested with it, being an Executing Court.

13. After hearing Mr. Wadhwa, learned Senior Counsel, this Court is of the opinion that this question needs consideration and would like to examine the judgments rendered by other High Courts on this point as well as examine the judgments rendered by the Supreme Court in relation to the provision of Section 12 (5) of the Arbitration and Conciliation Act, 1996.

14. In that view of the matter, it would be appropriate if the learned Executing Court refrains from making observations as noted above and also refrains from burdening the petitioner with costs as noted above.

15. Learned Senior Counsel also submits that none had appeared on behalf of the respondent at the arbitration stage nor had anyone entered appearance even at the execution stage nor were any objections filed under Section 34 of the Act.

16. Issue notice. Notice may be served through all permissible modes, upon petitioner taking steps within a week.

17. List on 30.05.2023.

**TUSHAR RAO GEDELA, J**

**JANUARY 24, 2023/nd**

CM(M) 93/2023

3