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

+ ARB.P. 288/2016

XJ ELEVATORS INDIA PVT LTD Petitioner
Through: Mr. Malik A., Advocate.

versus

KAROBI WADE Respondent
Through: Mr. Rahul Malhotra, Advocate.

CORAM: JUSTICE S.MURALIDHAR

% **ORDER**
25.01.2017

IA No.13922/2016

1. For the reasons stated in the application, the delay in re-filing the rejoinder is condoned and the application is disposed of.

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2. The objection of the Respondent, who happens to be a widowed lady aged 65 years, is that the claim of the Petitioner, on the face of it, is stale and in terms of the judgment of the Supreme Court in *S.B.P. & Co. v. Patel Engineering (2005) 8 SCC 618*, the present petition should not be entertained.

3. The facts in brief are that a contract was entered into between the Petitioner and the Respondent on 13th December, 2011 for installation of a lift in the residence of the Respondent at J-1953, Chittaranjan Park, New

Delhi. The total amount to be paid by the Respondent to the Petitioner on successful completion and installation of the lift was Rs. 9.80 lakh.

4. It is the case of the Respondent that the Petitioner abandoned the work just short of installation and commission. While 90% of the amount was paid, 5% of the amount was to be paid upon successful completion of installation and the remaining 5% upon successful commissioning of the lift.

5. The case of the Respondent is that 90% of the amount due to the Petitioner was paid by a cheque dated 8th June, 2012. In the documents filed by the Petitioner, there is a copy of the ledger account maintained by the Petitioner for this particular project which shows that payments were made by the Respondent on 22nd December 2011 and 29th January 2012. On 12th June, 2012, a cheque issued by the Respondent for a sum of Rs. 7,35,000 was, in fact, encashed. For over three years thereafter, the Petitioner appears to have taken no steps. It now stated that the Petitioner raised an invoice on the Respondent on 27th March, 2013 for a sum of Rs. 8.33 lakh.

6. While the justification for raising such an invoice for the said amount is not required to be gone into at this stage, it is evident that the mere raising of an invoice by the Petitioner would not provide it with a fresh cause of action. Unless there is an acknowledgement of debt by the Respondent or a denial of the claim of the Petitioner by the Respondent at any time after 12th June, 2012, the limitation as far as the claim of the Petitioner is concerned would begin to run from 12th June, 2012 when it last received payment from the Respondent.

7. The legal demand notice was issued on 21st September, 2015 i.e., after the expiry of the period of three years after the cause of action arose *qua* the claim of the Petitioner against the Respondent.

8. The Court is of the view that the Petitioner is seeking to recover a stale claim and in such circumstances no case is made out for reference of the disputes to arbitration.

9. The petition is, accordingly, dismissed.

S. MURALIDHAR, J.

JANUARY 25, 2017

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