



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.214 OF 2025**

The Pune Cantonment Board
through its Chief Executive Officer ... Applicant
versus
Noel Vincent Joseph and Ors. ... Respondents

Mr. Tushad Kakalia with Mr. Sandeep Goyal i/by Mulla and Mulla and Craigie Blunt and Caroe, for Applicant.
Mr. Saket Mone with Mr. Abhishek Salian, Mr. Raghav Taneja, Mr. Devansh Shah i/by Vidhii Partners, for Respondents.

CORAM: N.J.JAMADAR, J.

DATE : 17 APRIL 2025

P.C.

1. Heard the learned Counsel for the parties.
2. This revision is directed against an order dated 23 December 2024 passed by the learned Civil Judge, Sr. Division, Pune, on an application for rejection of the plaint under the provisions of Order VII Rule 11(d) of the Code of Civil Procedure, 1908, on the ground that the suit is barred by the provisions contained in Section 339(1) of the Cantonments Act, 2006.
3. By the impugned order, the learned Civil Judge was impelled to repel the challenge on the ground of bar of limitation observing that the question of limitation, in the circumstances of the case, was a mixed questions of law and fact.
4. Learned Counsel for the Applicant submitted that the learned Civil

Judge did not properly appreciate the ground of bar of limitation. Inviting attention of the Court to the provisions contained in Section 339(1) and (3) of the Act, 2006, learned Counsel submitted that the pre-suit notice with the elements as incorporated in sub-Section (1) of Section 339, is peremptory and after such two months notice, the Plaintiff is also enjoined to institute the suit within a period of six months. In the case at hand, the essential challenge is to a notice under Section 248 of the Act, 2006 issued in the year 2011. Pre-suit notice was given by the Plaintiff on 18 January 2020. Thus, the suit was ex-facie barred by limitation.

5. Learned Counsel for the Respondent countered the submissions on behalf of the Applicant. Laying emphasis on the nature of the suit and the reliefs claimed therein, it was urged that the pre-suit notice, as envisaged by sub-Section (1) of Section 339, was not at all warranted as Plaintiff was seeking injunctive reliefs; which suit is exempted from the rigour of the pre-suit notice by the provisions contained in sub-Section (4) of Section 339 of the Act, 2006.

6. I have perused the averments in the plaint. A meaningful reading of the plaint as a whole would indicate that the genesis of the dispute is in the action on the part of the Cantonment Board pursuant to the notice issued on 19 April 2011 under Section 248 of the Act, 2006, wherein the details of the unauthorized constructions were indicated. Thereafter, proceedings ensued

between the Plaintiff and the Cantonment Board. Eventually, on 25 June 2024, the Plaintiff was called upon to demolish the alleged unauthorized construction within three days, failing which the Cantonment Board would take action of demolition. Thus, the entire construct of the plaint, including the developments which have taken place since the issue of notice under Section 248 of the Act, 2006, would be required to be kept in view.

7. In any event, the provisions of sub-Section (4) of Section 339 seem to be prima facie attracted to the facts of the case, as the Plaintiff has approached the Court seeking relief of injunction as three days notice of demolition was issued by the Cantonment Board.

8. Learned Counsel for the Applicant would urge that sub-Section (4) of Section 339 would have no application as the Plaintiff has sought relief of declaration also in respect of the notices and actions of Cantonment Board and not injunction simplicitor.

9. I find it difficult to accede to this submission. The relief of declaration is the foundation on which the relief of injunction is premised. The Plaintiff could not have instituted the suit for injunction simplicitor without seeking a declaration qua underlying notices and action of the Cantonment Board. Therefore, in the totality of the circumstances, the learned Civil Judge does not seem to have committed any error in observing that the question of limitation, in the facts and circumstances of the case, is a mixed question of

fact and law. Thus, in exercise of revisional jurisdiction, this Court does not find any material irregularity or jurisdictional error in the exercise of jurisdiction by the trial Court.

10. The Application, therefore, stands rejected.

11. All contentions are, however, kept open for adjudication at the trial and the trial Court shall not be influenced by any of the observations made hereinabove while adjudicating the suit.

(N.J.JAMADAR, J.)