

- [2] in any case, the building is in dilapidated condition and by order dated 30th June, 2016 passed by the Division Bench of this Court in Writ Petition No.2276 of 2015, petitioners namely Shree Dipty Co-operative Housing Society Ltd were given 4 weeks time to vacate the suit premises. She submitted that the said order was enclosed at Exhibit B to the affidavit-in-rejoinder of the defendant dated 15th June, 2017. In paragraph 4 of that rejoinder, it is specifically stated that building is in a dilapidated condition and it is very risky to occupy and stay in the said building. Therefore, most of the tenants have vacated the suit building.
- [3] as the suit premises is not in existence in view of the demolition of the building, there is no question on the part of the defendant producing any material for fixing a reasonable compensation and finally,
- [4] the respondent is not landlord of the suit premises and, therefore, the learned trial Judge was not justified in decreeing the suit.

4. I have considered the submissions advanced by Ms. Dighe. I have also perused the material on record. A perusal of the trial Court's judgment and in particular finding against Issue No.1 shows that the learned trial Judge held that the plaintiffs have proved that they are the landlords of the suit premises. A perusal of the trial Court's judgment shows that the learned trial Judge has decreed the suit mainly under section 15 of the Maharashtra Rent Control Act, 1999 (for short 'Act'). Aggrieved by that order, the defendant preferred appeal before the Appellate Court. During pendency of the appeal, the defendant took out application Exhibit 6 under Order-XLI, Rule-5 of the C.P.C for stay of the

eviction decree. A perusal of that application and in particular paragraph 2 shows that the defendant only contended that if the eviction decree is not stayed, grave, irreparable harm and prejudice will be caused to them which cannot be compensated in terms of money. On behalf of the respondent, reply was filed. A perusal of paragraph 4 shows that respondent relied on Ready Reckoner for Greater Mumbai for the year 2016-2017 as also decision of the Apex Court in the case of **M/s. Atma Ram Properties (P) Ltd Vs. Federal Motors Pvt Ltd, 2005 (1) SCC 705**. The defendant filed affidavit-in-rejoinder on 15th December, 2017. In rejoinder, the defendant relied on the order dated 30th June, 2016 passed by the Division Bench of this Court in Writ Petition No.2276 of 2015. In paragraph 4 of the affidavit in rejoinder, it is asserted that Municipal Corporation of Greater Mumbai directed the petitioner/Society in that Petition to vacate the building immediately as it requires to be demolished as the same is required to be pulled down being in a ruinous and dilapidated condition. Therefore, most of the tenants have vacated the suit building. In other words, the defendant did not specifically contend that the building where the suit premises is situate is actually demolished.

5. Assuming in favour of the defendant that the suit premises is not in existence as the building where the suit premises is situate is demolished, in that event, there is no question for the defendant applying for stay of eviction decree. In view of the decision of the Apex Court in the case of **Shah Ratansi Khimji & Sons Vs. Kumbhar Sons Hotel Private Limited and others, (2014) 14 Supreme Court Cases, 1**, the defendant ought to have contended that notwithstanding demolition of the suit premises, their tenancy rights are not extinguished.

6. Ms. Dighe submitted that the suit premises is not in existence as the building where the suit premises is situate is demolished, there is no

question of defendant producing material on record for fixing interim compensation. This submission is stated to be rejected. Lastly, she submitted that respondents are not landlords. I have already indicated finding recorded by the trial Judge against Issue No.1. While deciding interim compensation, the Court has to consider the findings recorded by the learned trial Judge *prima facie* to be correct while decreeing the suit.

7. As against this, a perusal of the impugned order shows that the Appellate Court considered the decision in the case of **M/s. Atma Ram Properties (P) Ltd** (supra), as also the fact that the plaintiff relied on valuation of Ready Reckoner in the area of the suit premises. The Appellate Court also noted that the suit premises is quite old. As against the claim made by the plaintiff/respondent of Rs. 38,848/- per month as compensation, the Appellate Court directed the defendant to deposit Rs. 20,000/- per month as and by way of interim compensation. The defendant did not place any material for fixing reasonable compensation. The defendant also did not come with the case that the suit premises is demolished. The said argument is advanced before this Court without any foundation. The defendant did not come with the case before the Appellate Court that the suit premises is already demolished. The defendant did not place any material on record for fixing a reasonable compensation. In view thereof, during the course of hearing, I suggested Mrs. Dighe to consider filing Review Petition before the Appellate Court and withdrawing this Application. She, however, did not accept the suggestion and proceeded to argue the matter.

8. In the light of the aforesaid discussion, no case is made out for interfering with the impugned order. Hence, Application fails and the same is dismissed.

[R.G. KETKAR, J.]