

16.10.2023
Court No. 13
Item No. 28
AP

**FA 224 of 2010
With
CAN 5 of 2023**

**Abhishek Mitra & Ors.
Vs.
Ruby Mitra & Ors.**

Mr. Milan Chandra Bhattacharjee, Senior Advocate
Ms. Sulagna Bhattacharya
Mr. Samrat Das

... For the applicants/respondents.

Re.: CAN 5 of 2023

1. The postal endorsement on the notice to the appellants by the respondents is returned with the endorsement left.

2. Mr. Bhattacharjee, learned Senior Advocate appearing for the respondents submits that since after the appeal was dismissed by this Court, the appellants have surrendered vacant possession of the premises and have left.

3. The suit was decreed against the appellants/plaintiffs. By the impugned judgement and decree dated 15.07.09, a counter claim of the respondents/defendants for eviction of the appellants was allowed and the prayer of the plaintiff for partition of the suit premises was dismissed.

4. Mr. Bhattacharjee, learned Senior Advocate submits that CAN 5 of 2023 has been filed by his client for return of the deposited amount made by the appellants pursuant to

this Court's order dated 27th July, 2010 passed in FAT 399 of 2009 as a pre-condition for stay.

5. The appeal was dismissed for default on 28th March, 2023 by a Coordinate Bench. No steps have been taken to seek recall of the said order till date.

6. In that view of the matter, the applicants/respondents are entitled to the prayers made in CAN 5 of 2023.

7. The Registrar General of this Court shall refund the deposited amount to Amiya Prova Mitra (since deceased her legal heirs are Ruby Mitra & Sandip Mitra), Arabinda Mitra, Anit Kumar Mitra, Ajit Kumar Mitra (since deceased his legal heirs are Smt. Malabika Mitra, Sir Koushik Mitra, Sri Kunal Mitra), Asit Kumar Mitra, Riya Mitra, Aloka Sen in equal shares totaling the amount of Rs.1,50,000/- together with all accrued interest into the respective bank accounts of the said persons.

8. Learned advocate-on-record for the respondents shall furnish particulars of the bank accounts of the said persons to the Registrar General forthwith.

9. Let payments be made by the Registrar General of this Court within a period of 15 days after the receipt of the bank particulars of the respondents.

10. The registry is directed to return the LCR to the Court below immediately.

11. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)