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

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**C.M. (Main) No.207 of 2009 & C.M. Appl. No.3627 of 2009**

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**01.02.2010**

DR. I.P. SINGH

.....Petitioner

Through: Mr. Manish Sharma, Mr. Amit Bhardwaj and  
Mr. Rohan Sharma, Advocates.

Versus

SHRI M.P. JAIN

.....Respondent

Through: Mr. R.B.S. Chauhan, Advocate.

Date of Reserve: 27<sup>th</sup> January, 2010

Date of Order: 1<sup>st</sup> February, 2010

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**J U D G M E N T**

**1.** By this petition, the petitioner has assailed an order of Additional District Judge dated 6<sup>th</sup> February, 2009 whereby an application of the petitioner under Order I Rule 10 CPC was dismissed.

**2.** Brief facts relevant for the purpose of deciding this petition are that the petitioner is defendant in suit for specific performance filed before the trial court by one Mr. M.P. Jain. The suit was filed on the basis of Agreement to Sell entered into between Mr. M.P. Jain and the petitioner in respect of the property of the petitioner. The contention of the petitioner is that the property was actually agreed to be bought by Mr. Raj Kumar Jain, son of the plaintiff (Mr. M.P. Jain), who struck the deal with the petitioner but wanted that the sale deed should be executed in the name of his father so the Agreement to Sell

was executed in the name of his father and a sum of Rs.1 lac was paid as token money to the petitioner. Mr. Raj Kumar Jain signed the Agreement as a witness. However, after entering into an Agreement, there was some resistance in the family of the petitioner regarding sale deed and the petitioner wrote a letter to Mr. Raj Kumar Jain accompanied with a cheque of Rs.1 lac, that is, token money received by the petitioner and the petitioner scrapped the deal. This token money was received back by Mr. Raj Kumar Jain, son of Mr. M.P. Jain and he deposited this money in his account. No response was given to the petitioner that the deal was not scrapped. Thus, the petitioner considered that the deal was scrapped. Later on, father of Mr. Raj Kumar Jain filed the suit for specific performance. The petitioner made this application for making Mr. Raj Kumar Jain as a party since Mr. Raj Kumar Jain was the person who had struck the deal and had also taken Rs.1 lac back and deposited the same in his account.

**3.** The trial court dismissed this application on the ground that since Mr. Raj Kumar Jain was not a party to the agreement, he was not a necessary party for adjudication of the case. The deal was between Mr. M.P. Jain and the petitioner and only Mr. M.P. Jain was a necessary and proper party.

**4.** In a suit for specific performance, normally the parties to the suit are only the parties to the Agreement. However, where the allegations are made that the actual person with whom deal was struck was different and this person had not only negotiated but was also involved in the transaction either by payment of money or by receipt of money back, such persons become a necessary and proper party for adjudication of the issues between the parties. It is not disputed that the amount of Rs.1 lac paid as token money to the petitioner, was received back by Mr. Raj Kr. Jain, son of the defendant. It is also not in dispute that Mr. Raj Kumar Jain was one of the witnesses to Agreement to Sell. Mr. Raj

Kumar Jain had no reason to deposit the amount of Rs.1 lac in his account if he was not involved in the transaction. If he had nothing to do with transaction, he would have returned this money to the petitioner and told him that he was nobody to receive back this money and the money should be sent to his father.

**5.** Looking at the conduct of Mr. Raj Kumar Jain in quietly receiving money back from the petitioner, depositing it in his account and giving no response to the petitioner's letter of sending the money back and scrapping the transaction, shows that Mr. Raj Kumar Jain was a party to the transaction and was a necessary and proper party. The trial court did not exercise its jurisdiction of making a proper and necessary party to the suit. The order of the trial court is set aside. The application of the petitioner stands allowed. Mr. Raj Kumar Jain shall be impleaded as a party to the suit.

**6.** With above directions, the petition stands disposed of.

**SHIV NARAYAN DHINGRA J.**

**FEBRUARY 01, 2010**  
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