

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

**Suit No. 977 of 2014**

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
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- For hearing of CMA No.4509/2020 (U/s 151 CPC)

**01.06.2020**

Mr. Asim Iqbal, Advocate for the Plaintiff alongwith  
Mr. Farmanullah, Advocate  
Mirza Saleem Akhtar Baig, Advocate for DMC (South) alongwith  
Malik Fayaz, Chairman DMC (South)  
Mr. Kelash Waswani, AAG  
Irshad Sodhar, DC (South), Rana M. Umer, AC Civil Lines, Imtiaz  
Mangi, AC (Rev), Ahmer Shafiq, Deputy Director, Parks and PI  
Asadullah  
Mr. Mohsin Khan, Advocate holds brief for Mr. Shahban Solangi,  
Advocate for KMC

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Counter affidavit filed by the Deputy Director Parks and Recreation, DMC (South), Application under Section 151 CPC on behalf of Commissioner Karachi (Contemnor No.1) and report on behalf of SHO, Clifton Police Station are taken on record.

2. Learned counsel for the Plaintiff chooses to proceed with the instant application and states that the present application has been moved by the Plaintiff to restore upon him possession of two roundabouts located on one of the main artery of Clifton-Karachi to maintain greenery and plantation thereon, which sites were handed out to it for beautification under Agreements dated 19 March, 2014 (Annexure P-4 Page 43) and 30 April 2014 (Annexure P-7 page 57) by the Defendant No.4 (District Municipal Corporation, South, Karachi) upon the Plaintiff having adopted these roundabouts for beautification, maintenance, painting, cleanliness, lighting and placement of flower pots for a period of 10 years.

3. Brief background of the case of Plaintiff (Mr. Asim Jofa s/o Muhammad Sadiq) claiming to be a well renowned businessman engaged, *inter alia*, in the business of advertisement under the name and style of "Jofa Marketing and Advertiser", duly registered with Defendant No.1 (Karachi Municipal Corporation) is that on 19.03.2014, Defendant

No.4 granted the request of the Plaintiff for adoption of a roundabout located on Khayaban-e-Iqbal (commonly known as Two Sword or *Do Talwar* Roundabout) including its surrounding triangles for a period of 10 years subject to the payment of Rs.1.3 million permission fee (with yearly 10% increase), whereupon an agreement was entered into between the Plaintiff and the Defendant No.4. Responsibility of the Plaintiff as detailed in Clause 3 of the Agreement was to beautify, maintain, paint, clean, lighten and place flower pots on the adopted site. The Plaintiff also applied for such rights in respect of another roundabout on the same road (commonly known as Three Sword or *Teen Talwar* Roundabout) and its surrounding triangles, which request, as claimed by the Plaintiff, was granted on 02.04.2014 for a period of 10 years subject to the payment of Rs.1.25 million per annum in four equal installments and parties entered into an identical agreement dated 30 April, 2014, thus Plaintiff took possession of both the adopted roundabouts and started beautification work as well as placed its banners and advertisement hoardings/boards thereon.

4. For the beautification work performed by the Plaintiff, under Clause-9 of the above Agreements, a suitable acknowledgment by Adoptee (the Plaintiff/Applicant) was permitted in the manner prescribed as under:-

*9. A suitable acknowledgment of the work done by the ADOPTEE shall be in writing depicting DMC (South)'s monogram, name and location of Adopted Site, name of the ADOPTEE, date of adoption, date of concluding adoption and amount spent scrip to mutually by the ADOPTEE and by the DMC (South), Karachi at an appropriate place to be decided mutually by the ADOPTEE and by concerned of DMC (South) for which no tax will be levied by DMC (South).*

5. Also of relevance is Clause-12 of the Agreement wherein, the Adoptee while maintaining the site, was granted a non-exclusive right for displaying brand advertisements for the term of the Agreement. Full text of the said Clause is also reproduced hereunder:-

*12. DMC (South) shall grant a non-exclusive right/authority to Adoptee for conducting maintenance service alongwith displaying brand advertisements for a term of (10) ten years.*

6. It appears that soon after the Plaintiff placed its banners, hoardings and advertising boards, Defendant No.1 (Karachi Municipal Corporation) and Defendant No.2 (Director Advertisement KMC) demanded advertisement tax from the Plaintiff, however when Plaintiff proceeded to pay such payments, those were returned as the Defendant No.2 claimed that the agreements made by the Plaintiff with Defendant No.4 were illegal, since the power to enter into such agreements only vested with Defendant No.1 being the landlord of those public places. A letter to that effect was issued (Annexure P-10, Page 77) to the Plaintiff, at which instant, the Plaintiff approached this Court seeking enforcement of the agreements, possession of the sites and claiming damages etc.

7. On the first date of hearing i.e. 17.06.2014, CMA No.8000/2014 made under order XXXIX rules 1 and 2 was heard ex-parte when defendants were restrained from violating the agreements **provided those were not cancelled or revoked**, as well as, the defendants were directed to act strictly in accordance with law.

8. The plaintiff through CMA 10979/2014 dated 22.08.2014 requested to deposit Advertisement Tax with the Nazir of this court, on which orders dated 29.09.2014 were passed directing the Plaintiff to file details of such payables, however, it seems that neither the Plaintiff perused this application further, nor deposited taxes with the Nazir.

9. Allegedly, when court's directions were not complied with, the Plaintiff moved an application being CMA No.12915/2014 alleging that removal of billboards and peeling of the advertisement displayed by the Plaintiff on these two sites have caused huge losses to the Plaintiff as well as such acts were violative of the interim orders passed by this court. By order dated 04.10.2014, alleged contemnors were directed to restore the billboards to their previous position within 24 hours.

10. In compliance of the said order, a Statement was filed by the alleged contemnor No.2 (Senior Director LT Advertisement KMC) dated 14.10.2014 stating that the orders of this Court have been complied with and all the signboards/pole signs were restored. The said Statement containing photographs of the billboards and advertisement so placed included pictures of a women clothing brand of the Plaintiff, which could be found between pages 89 to 105. Notwithstanding therewith, vide letters dated 25.02.2015 Defendant No.4 itself cancelled adoption of both the roundabouts by the Plaintiff. These letters were immediately challenged through contempt application bearing CMA No.3792/2015, where vide order dated 09.03.2015 operation of these letters were suspended. These contempt proceedings including those initiated through CMA 5245/2015, continued wherein the alleged condemners filed objections/counter affidavits. Court was informed that Hon'ble Supreme Court has given directions with regards hoarding and advertisement placed on public lands in CPLA No.152-K of 2011 on 20.08.2015, 26.06.2015 and 05.05.2015 and has sought immediate removal of such unauthorized billboards and hoardings throughout Karachi. Court was also informed that orders of like nature were also passed by the Hon'ble Supreme Court on 09.03.2017 and 09.05.2019 in CP No. 7-K and 19-K.

11. While further contempt application Nos. 5347/2018 and 800/2020 were moved by the Plaintiff, Defendants also moved CMA 761/2018 stating that no fees/taxes have since been paid by the Plaintiff. A contempt application was also moved against the Plaintiff on 20.02.2019 through CMA 2770/19 and substantially the matter was taken up on 10.03.2020 when the following order was passed:-

*"Learned counsel for the plaintiff states that despite restraining orders passed by this Court, the alleged contemnors have demolished the beautification works under taken by the plaintiff at Do Talwar and Teen Talwar under a contract with DMC (South). The Commissioner Karachi and counsel for the DMC (South) state that the plaintiff had constructed an advertising sign in excess of the prescribe limits which had to be demolished on certain orders passed by the Hon'ble Supreme Court with regards to signboards. The Commissioner Karachi further states that pursuant to orders passed by the Hon'ble Supreme Court of Pakistan, the*

*sites of Do Talwar and Teen Talwar are under his management for beautification works. However, he concedes that presently there is advertising of 'PSL' at those sites. Learned counsel for the plaintiff states that shows that third party interest had been created at those sites in violation of the court orders. The Commissioner Karachi states that the advertising of 'PSL' will be removed after 30 March, 2020. D.C (South) states that the contract of the plaintiff has long expired. These aspects will be examined after 30<sup>th</sup> March, 2020 when, per the Commissioner Karachi, the existing advertising of 'PSL' will be removed and the said sites become unencumbered for purposes of beautification...."*

After passing of the said order, the present application was moved, which was fixed for hearing today.

12. Learned counsel for the Plaintiff submitted that the Plaintiff is in possession of valid agreements with Defendant No.4 for beautification of these two roundabouts, which lay on one of the vital artery of the city and has been performing the beautification work zealously since the year 2014. However, such efforts of the Plaintiff are time and again hampered by the undue interference caused by the defendants.

13. When posed by a question to show pictures of what beautification work has been performed by the Plaintiff on these two roundabouts, counsel for the Plaintiff referred to Annexure P-9 attached to his CMA No.5347/2018, reproduced hereunder as well as stated that after the said agreement of 2014 the Plaintiff also entered into another agreement with DMC (South) on 30.06.2019 (attached as annexure to his Rejoinder filed in CMA No.800/2020). Learned counsel stated that lastly those roundabouts were forcefully taken over by the Deputy Commissioner (South) to place advertisement and publicity material with regard to the ongoing PSL cricket tournament at which juncture the Plaintiff lost control of these sites and was unable to water the plants and maintain the greenery, for which purpose the instant application is made. A request was made that the application be granted, so that the beautification of these two roundabouts as manicured by the Plaintiff over the years is not destroyed.



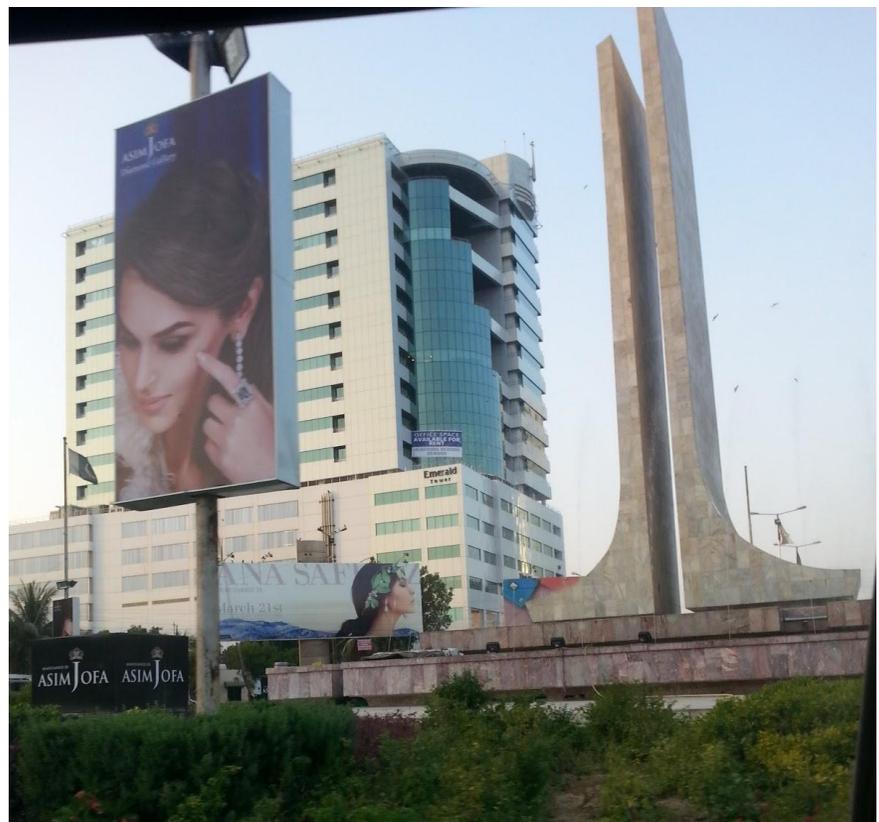
14. Learned counsel for defendants as well as the alleged contemnors present in this Court stated that the Plaintiff not only failed to make the initial payment with regard to the first agreement of 2014, even thereafter it was alleged that the Plaintiff has not made any payment for the continuous use of the sites. It was also stated that character of both the sites has been destroyed by the Plaintiff. It was next alleged that both the agreements were made by unauthorized persons, nevertheless upon non-payment of the contractual amount, the same were cancelled. It was forcefully submitted that while the said agreements permitted through clause-9 that the Plaintiff had a right to put his name as adopter of those roundabouts, however the Plaintiff grossly transgressed from this right and made concrete structure right in the middle of the roundabouts whereupon signboards were posted, which was in utter violation of the agreements as well as such structure of permanent nature tarnished the horticultural and architectural beauty of these two roundabouts, notwithstanding therewith those permanent structures acted to blackout heavy traffic flow between these two busy roundabouts. It was also alleged that not only permanent structures were made on the roundabouts and triangles, the Plaintiff further transgressed from his rights and placed photographs of models promoting Plaintiff's clothing brand, therefore eventually on all sites of the

roundabouts, in the garb of these agreements, there were more than eight pole hoardings at a time. It was stated that acting on the orders of the Hon'ble Supreme Court passed on 09.05.2019 where the Supreme Court directed the administration to remove all advertising signage from public places, these concrete structures and advertising boards were removed by the District Administration. It was stated by the counsel of DMC that DMC intends to take over these roundabouts and wishes to beautify those through their own cost. A request was made to dismiss contempt proceedings also since signboards, hoardings and the permanent structures were removed in compliance of the orders of the Hon'ble Supreme Court.

15. From the above background it appears that while this Court is already posed with the question of existence or otherwise and enforceability of the agreements which the Plaintiff entered with the Defendant No.4, notwithstanding therewith plaintiff did not pursue its own application to deposit fees with the Nazir of this court. Also court fails to see what substantial measures were taken by the Plaintiff/Applicant in beautifying these vital and prime roundabouts of the city. The following pictures would show how these roundabouts were originally kept and what the Applicant has done to those under the present agreements.



Do Talwar Originally



Do Talwar Under Agreement



Teen Talwar Originally



Teen Talwar Under Agreement

16. Prima facie, it appears that except for commercial exploitation of these architecturally enriched sites, and to distort and demolish their stature, no beautification effort has been done by the Applicant. The Teen Talwar monument was commissioned by former Prime Minister, Zulfikar Ali Bhutto in 1973 and was designed by architect Minu Mistri. This Monument was part of a beautification scheme and inscribed with Quaid-

e-Azam Mohammad Ali Jinnah's creeds Unity, Faith and Discipline. Same for Do Talwar, which also inscribed Quaid-e-Azam's saying, which cannot be even seen today as hidden behind bushes and shrubs.

17. Admittedly, the area being a public space is owned by Defendant No.1 and removal of the signboards, hoardings and concrete structure was performed in compliance of the orders of the Hon'ble Supreme Court as well as on the ground that such placement of signboards and concrete structure was in utter violation of the agreement (even if subsisting between the parties), Applicant clearly transgressed its rights and rather than beautifying these roundabouts, has spoiled these architectural icons to the loss of the public at large.

18. In these circumstances, I do not see any reason to allow this application which is dismissed and the Defendant No.1 to ensure upkeep of greenery of these roundabouts and bring them back to their original glory on its own, if so needed and it may also seek assistance for preservation and beatification of these city icons with the help and advice from the Floral Art Society (Karachi Chapter) as well as Horticultural Society of Pakistan-Karachi, to whom a copy of this order be sent.

To come up on 22-06-2020, for hearing of all remaining applications.

Judge