

CASE NO.:
Appeal (civil) 4678 of 2005

PETITIONER:
ICICI BANK & Anr.

RESPONDENT:
Municipal Corporation of Greater Bombay and others

DATE OF JUDGMENT: 04/08/2005

BENCH:
P. Venkatarama Reddi & P.P. Naolekar

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Civil) No. 24215 of 2002)

P.P. Naolekar, J.

Leave granted.

In the present appeal the appellants ICICI Bank Limited has challenged the order of the Bombay High Court whereby the High Court has dismissed the writ petition filed by the appellant holding that the sign boards fixed above the ATM Centers of the ICICI Bank do amount to an advertisement and therefore the action taken by the Municipal Corporation of Greater Bombay by issuance of notice is in accordance with the law. The facts, in brief are that:

Sometime up to the year 2000 the appellant No.1, ICICI Bank has installed ATM Centers and Extension counters, Bank Branches at 64 locations in the city of Bombay for the convenience of its depositors. Certain signboards were fixed above the entry of the ATM centers and extension counters indicating their location. They are illuminated to indicate the locations of the ATM centers. The Municipal Corporation did not approve of putting up of the illuminated signboards of ATM centers and therefore issued notice to the appellant under Section 328 and 328-A of the Bombay Municipal Corporation Act 1888 (hereinafter to be referred to as 'The Act'). The contents of the notice are that the appellant has displayed at its premises sky sign/Glow Sign/Neon Sign/Illuminated Boards without the permission of the Bombay Municipal Corporation. It was incumbent upon the appellant before putting up such signboards etc., to have taken the permission and made the required payment. The notice required the appellant to make certain payment towards by filling the prescribed form within three days of the receipt of the notice, failing which BMC would take necessary action, including defacing/removal of the boards at appellant's cost. The notice was replied by the appellant contending therein that the appellant does not admit any of the allegations mentioned in the notice and requested the BMC not to take any action as contemplated in the said notice. Thereafter in the month of August 2003 the appellant filed a writ petition in the High Court of Bombay alleging that the impugned notices which were served on the appellant bank are wholly without jurisdiction and without the authority of law and that the same violated the

fundamental and other rights of the appellant bank and therefore the same are illegal, null and void. According to the appellant the signboards fixed over the ATM Centers or Extension counters does not amount to advertisement as specified in Section 328A of the Act nor do they come under the definition of sky-sign as defined in Section 328 of the Act.. They merely tell the existing account holder about the location of the ATM booth. The said signboards are only for the guidance of the public and that the services rendered by the appellant bank are not advertised. The signboards are essential for the working and business of the appellant bank and does not amount to advertisement and therefore the notices issued by the Bombay Municipal Corporation, requiring the appellant to make the payment of the amount is illegal. The High Court dismissed the writ petition filed by the appellant on the ground that the controversy involved in the case is squarely covered by the judgment of the Apex Court in Municipal Corporation of Greater Bombay Vs. Bharat Petroleum Corporation Ltd. JT 2002 (3) SC 452 and held that the signboards fixed above the ATM Centers of the appellant Bank do amount to an advertisement. The impugned notices, therefore, cannot be faulted. In consequence thereof the writ petition filed by the appellant was dismissed.

The learned senior counsel Shri R.F. Nariman has urged that the illuminated signboards of the appellant Bank does not fall within the definition of sky-sign in Section 328 of the Bombay Municipal Corporation Act 1888 and therefore Section 328 of the Act has no application. Hence, the High Court committed an error in applying the ratio laid down by this Court in the matter of Municipal Corporation of Greater Bombay's case (supra). The signboards fixed on the ATM Centers of the Bank and its Extension Counters only indicates to its customers about the location of the Bank/ATM Centers to facilitate them to carry out the banking transaction at any time of the day or night and is in the nature of the in-house facility provided to the customers of the bank and does not in any way convey message of commercial or business activities of the appellant bank. The illuminated signboard does not relate to the business or commercial activities of the bank nor does it propagate the ideas with regard to the goods or services rendered by the party. It merely displays as to where the ATM Center is located and therefore the action of the bank putting up the illuminated signboards does not fall within the ambit of Section 328A of the Act. To counter this argument, Mr. V.R. Reddy, learned senior counsel submitted that in the facts of the case, the decision given by this Court in the case of Municipal Corporation of Greater Bombay (supra) is directly on point and the ratio decided covers the case. In any case, the illuminated signboards at the entry of the ATM Center and Extension Counter does not indicate their locations alone but attract the prospective customers also to open their accounts with the ICICI Bank and in that manner it propagates ideas with regard to the goods or the services rendered by Bank and therefore would be covered under Section 328A of the Act.

Before we consider the respective submissions made by the counsel, it would be fruitful to read the relevant provisions of Section 328 and 328A of the Act.

The necessary extracts of the relevant provisions for adjudicating the question involved in this case are as under:

328. (1) No person shall, without the written permission of the Commissioner, erect, fix or retain any sky-sign, whether now existing or not, [where a sky-sign is a poster depicting any scene from a cinematographic film, stage play or other stage performance, such permission shall not be granted, unless prior scrutiny of such poster is made by the Commissioner and he is satisfied that the erection or fixing of such poster is not likely to offend against decency or morality. No permission under this section shall be granted, or renewed, for any period exceeding two years from the date of each such permission or renewal].

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(3) If any sky sign be erected, fixed or retained contrary to the provisions of this section, or after permission for the erection, fixing or retention thereof for any period shall have expired or become void the Commissioner may, by written notice, require the owner or occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained, to take down and remove such sky-sign.

The expression 'sky sign' shall in this section mean any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole standard frame-work or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard framework or other support. The expression 'sky-sign' shall also include any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street, but shall not include:

(a) any flagstaff, pole, vane or weathercock, unless adapted or used wholly or in part for the purpose of any advertisement, announcement or direction;

(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof.

328A. (1) No person shall, without the written permission of the Commissioner erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure. [Where an advertisement depicts any scene from a cinematographic film,

stage play or other stage performance, such permission shall not be granted, unless prior scrutiny of such advertisement is made by the Commissioner and he is satisfied that the erection or exhibition of such advertisement is not likely to offend against decency or morality;]

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(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this section after the written permission for the erection, exhibition, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by notice in writing, require the owner or occupier of the land, building wall, hoarding or structure upon which the same is erected, exhibited, fixed or retained, to take down or remove such advertisement

By virtue of Section 328 of the Act, no person is permitted without the written permission of the Commissioner to erect, fix or retain any sky-sign, and the permission granted by the Commissioner or the renewal thereof shall be for any period exceeding two years from the date of each such permission or renewal. Sub-s.(3) authorizes the Commissioner by written notice to direct the owner or occupier of the land, building or structure upon or over which the sky-sign is erected, fixed or retained to take down and remove such sky-sign, if such sky-sign is fixed, erected or retained contrary to the provisions of Section 328 of the Act. According to Sub-s.(3) "Sky-sign" shall mean any word, letter, model, sign device or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, standard frame-work or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard framework or other support. The expression "sky-sign" shall also include any balloon, parachute, or other similar device employed wholly or in part for the purpose of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street. Sub-clause (a) and sub-clause (b) has a reference to what shall not be included to be the sky-sign. The reading of this section gives a clear cut indication that the sky-sign shall not be erected, fixed or retained unless written permission to that effect is obtained from the Commissioner and the sky-sign shall mean any word, letter, model, sign, device or representation balloon parachute or other similar device which is in the nature of an advertisement, announcement or direction or employed for the purpose of advertisement, announcement or direction, that is to say, if it is in the nature of advertisement, announcement or direction, it would be a sky-sign, provided the sign is visible against the sky from some point in any street which shall include part of any such post, pole, standard frame-work or other support upon

which the sky-sign rest. For any advertisement, announcement or direction to be a 'sky-sign', it is not necessary that the sign-boards are illuminated. The necessary ingredient of the sky-sign are that it should be in the nature of advertisement, announcement or direction, and should be visible against sky from some point in any street. So far as Section 328A is concerned, no person is permitted to erect, exhibit, fix or retain any advertisement upon any land, building, wall, hoarding or structure without the written permission of the Commissioner. Second proviso to sub-s.(1) exempts the person from taking permission if the advertisement is not illuminated or a sky-sign and which is exhibited within the window of any building or is related to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held upon or in the same building or to any trade or business carried on by the owner of any tram-car, omnibus or other vehicle upon which such advertisement is exhibited. Therefore, if the advertisement is not illuminated advertisement nor is a sky-sign and is being put at a place provided under clauses (a) and (b) of Section 328A of the Act, permission of the Commissioner is not required. The moment the advertisement is illuminated or is a sky-sign, even if it is exhibited or rested on the place mentioned in clauses (a) and (b) of Section 328A of the Act, the permission of the Commissioner is necessary. Sub-clause (3) authorizes the Commissioner to direct any person in breach of Section 328A to take down and remove such advertisement.

For application of Section 328, it is necessary that the word, model, sign or device or representation is in the nature of advertisement, announcement or direction. If it does not fall within the exception provided under the proviso, the permission of the Commissioner is necessary. It may be noted that under Section 328 it is not merely the advertisement but even something which is in the nature of advertisement is comprehended whereas under Section 328A, it is the advertisement alone which would attract the provisions of Section 328A of the Act. The language used in both the provisions make it explicitly clear that these provisions operate in somewhat different fields and the phrase 'advertisement' used in both Sections in its context pronounces a different meaning of the word. The application of these Sections depends upon the kind of the sign-boards or the illuminated boards etc.

Both the counsel have extensively argued the question of applicability of the decision rendered by this Court in the matter of Municipal Corporation of Greater Bombay (supra), as decision of the High Court is based on this decision. It is obvious from the decision in the case that the Court has adjudicated and decided mainly the scope of sub-s.(3) of Section 328 of the Act. The Court has not decided on the applicability, scope and ambit of Section 328A of the Act. The definition of 'sky-sign' came up for consideration before the Court. This Court laid emphasis on the expression "in the nature of an advertisement" in the definition of sky-sign in

Paragraph 10 of the Judgment which expression is not found in Section 328A of the Act.

The decision in the matter of Municipal Corporation of Greater Bombay (supra) has no relevance to the facts involved in the case before us for more than one reason. In Paragraph 6 of the Judgment, the Court says that although the relevant statutory provisions are Section 328/328A of the Act, the issues raised have to be considered and decided mainly on the scope of sub-section (3) of Section 328 of the Act. The paragraph makes it clear that the Court has considered the scope and reach of Section 328 of the Bombay Municipal Corporation Act 1888. That apart, in Paragraph 10 of the Judgment the Court held that "the indication given by emphasis supplied to some of the words used in the provision in question as well as the words "in the nature" of an advertisement, announcement or direction' would go to show that it is not a must to be that but is enough if it is 'in the nature of' that which is specified. The three words required to be construed cannot be said to admit of any one particular meaning alone but capable of being understood by their general or interrelated meaning suitable for the context". Thus, much emphasis was placed on the expression "in the nature of." The Court in Paragraph 9 of course has said that in common parlance 'advertisement' means to make publicly known an information by some device and to draw or attract attention of public/individual concerned to such information. It need not necessarily be to sell only or solely for commercial exploitation. Thus, it was pointed out that the advertisement would not necessarily mean the information supplied to the public or an individual solely for commercial exploitation. As it appears to us, the observation of the Court is made in the context of Section 328 of the Act where the phrase 'advertisement' is used in limited sense in as much as it includes information to the public and is in the nature of advertisement, although not an advertisement pure and simple.

In the present case we are not considering the scope and ambit of Section 328 of the Act, as, admittedly the advertisement in question is not sky sign within the meaning of Section 328 of the Act. The ratio and effect of the judgment is required to be ascertained with reference to the question of law as decided by the Court. The ratio of the judgment or the principle upon which the question before the Court is decided is alone binding as a precedent. The decision of the Supreme Court upon a question of law is considered to be a binding precedent, and this must be ascertained and determined by analyzing all the material facts and issues involved in the case.

In the matter of Paisner versus Goodrich (1955) 2 All ER 330, 332, Lord Denning in his Judgment has held:

"When the judges of this Court give a decision on the interpretation of an Act of Parliament, the decision itself is binding on them and their successors (see Cull v. Inland Revenue Commissioners), Morelle, Ltd. v. Wakeling. But the words which the Judges used in

giving the decision are not binding. This is often a very fine distinction, which will best be only be expressed in words. Nevertheless, it is a real distinction, which will best be appreciated by remembering that, when interpreting a statute, the sole function of the Court is to apply the words of the statute to a given situation. Once a decision has been reached on that situation, the doctrine of precedent requires us to apply the statute in the same way in any similar situation; but not in a different situation. Whenever a new situation emerges, not covered by previous decisions, the courts must be governed by the statute and not by the words of the judges\005\005."

In *Madhav Rao Scindia Vs. Union of India*, AIR 1971 S.C. 530, this Court said that it is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment.

In the matter of *C.I.T. Vs. Sun Engineering works (P) Ltd*, (1992) 4 S.C.C. 363 (Page 363), Justice Anand (As His Lordship then was), speaking for the Court, has said that it is neither desirable nor permissible to pick out a word or a sentence from the Judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court. The decision on the question involved in the case in which it is rendered and while applying the decision to the later case, the Courts must carefully try to ascertain the true principle laid down by the decision and not to pick out words or sentence from the judgment divorced from the context of the question under consideration by the Court.

In the case of *Municipal Corporation of Greater Bombay (supra)*, Section 328A was not at all interpreted by this Court. For the case to be a binding precedent, fundamental requirement would be, that the law pronounced should result from the issues raised before the Court between the parties and argued on both sides. In the matter of *Municipal Corporation of Greater Bombay* the definition of 'sky-sign' under Section 328 came up for consideration. In reaching the conclusion that the huge metallic board exhibited by BPC Petrol Bunk on a pole with the name of the Company and its symbol (Shell symbol) was a sky-sign, this Court laid emphasis on the expression "in the nature of an advertisement" occurring in the definition of 'sky-sign' in Paragraph 10 which expression is not to be found in Section 328-A. While interpreting Section 328 and construing the words 'in the nature of an advertisement, announcement and direction', this Court held that the advertisement need not necessarily be only or solely for commercial exploitation whereas Section 328A of the Act speaks about 'advertisement' alone and not 'in the nature of an advertisement'.

Normally the ratio of the case shall be deduced from the facts involved in the case and the particular provision of law which the Court has interpreted and the decision shall be read with reference to and in the context of particular statutory provisions involved in the matter.

In our considered opinion the decision rendered in the matter of Municipal Corporation of Greater Bombay (supra) is not a decision on the question of interpretation of Section 328A of the Act, particularly the phrase 'advertisement' used therein.

The next question that arises for consideration is whether notices issued by the Corporation to the appellant-ICICI Bank are per se illegal or without authority of law as putting up the sign boards of ATM centers at different places by the bank could out-rightly be said not to be an advertisement and thus does not attract the provision of Section 328A of the Corporation Act. To consider this aspect we have to see what shall be an advertisement for the purposes of Section 328A of the Act. The dictionary definitions of the word 'advertisement' are as under :-

BLACK'S LAW DICTIONARY, 8TH EDITION

Advertising : 1..The action of drawing the public's attention to something to promote its sale. 2. The business of producing and circulating advertisements

LAW AND COMMERCIAL DICTIONARY

Advertisement : Notice given in a manner designed to attract public attention. Edwards v. Lubbock Country, Tex Civ. App., 33, S.W.2d 482, 482. Information communicated to the public, or to an individual concerned, as by handbills, newspaper, television, bill-boards, radio. First Nat. Corporation v. Perrine, 99 Mont 454, 43 P.2d 1073, 1077.

THE NEW ENCYCLOPAEDIA BRITANNICA VOLUME-I

Advertising, the techniques used to bring products, services, opinions, or causes to public notice for the purpose of persuading the public to respond in a certain way toward what is advertised. Most advertising involves promoting a good that is for sale, but similar methods are used to encourage people to drive safely, to support various charities, or to vote for political candidates, among many other examples.

COLLINS DICTIONARY OF THE ENGLISH LANGUAGE

Advertisement \026 any public notice, as a printed display in a newspaper, short film on television, announcement on radio, etc., designed to sell goods, publicize an event, etc.

Advertising \026 1) the action or practice of drawing public attention to goods, services, events etc., as by the distribution of printed notices, broadcasting, etc. 2) the business that specializes in creating such publicity, 3) advertisements collectively; publicity.

THE CHAMBERS DICTIONARY

Advertisement - the act of advertising; a public

notice with the purpose of informing and / or changing public attitudes and behaviour; a short performance recorded for radio, T.V. etc. to advertise goods or services; news.

An advertisement is a matter that draws attention of the public or segment of public to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organization or line of conduct intended to promote sale or use of product or range of products. An advertisement is an information that producer provides about its products or services. An advertisement tries to get consumers to buy a product or a service. An advertisement is generally of goods and services and is an information intended for the potential customers and not a mere display of the name of the company unless the same happens to be a trade mark or trade name.

It is well settled that ordinarily the words used in the statute are to be understood in their natural, ordinary and popular sense. The broad principles underlying the construction and interpretation of the word or phrase in the statute is succinctly extracted from the leading authorities and work of authors and compiled in the book "Principles of Statutory Interpretation" (9th) Edn. 2004 by Justice G.P. Singh, Chapter 2, page 86 which reads :-

"When it is said that words are to be understood first in their natural, ordinary or popular sense, what is meant is that the words must be ascribed that natural, ordinary or popular meaning which they have in relation to the subject-matter with reference to which and the context in which they have been used in the statute. BRETT, M.R. called it a 'cardinal rule' that 'Whenever you have to construe a statute or document you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used'. 'No word', says PROFESSOR H.A. SMITH 'has an absolute meaning, for no words can be defined in vacuo, or without reference to some context'. According to SUTHERLAND there is a 'basic fallacy' in saying 'that words have meaning in and of themselves', and 'reference to the abstract meaning of words', states CRAIES, 'if there be any such thing, is of little value in interpreting statutes'. In the words of JUSTICE HOLMES : 'A word is not a crystal transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used.' Shorn of the context, the words by themselves are 'slippery customers'. Therefore, in determining the meaning of any word or phrase in a statute the first question to be asked is 'What is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the Legislature, that it is

proper to look for some possible meaning of the word or phrase".

Section 328A prohibits without prior permission of Commissioner, erection, exhibition of advertisement. The advertiser need not ask for permission if the advertisement is not illuminated or is not a sky sign, provided it is exhibited in window of any building, or relates to trade or business carried on within that land or building or when it relates to sale or letting of that property or in reference to any sale, entertainment or meeting organized therein, or it relates to business of railway company. Exceptions referred in the provision clearly has nexus and relevance to the business or trade or commercial activities.

The context in which the word advertisement has been used in Section 328A of the Corporation Act and in the commercial and ordinary parlance it must have direct or indirect connection with the business, trade or commerce carried out by the advertiser. It must have some commercial exposition. The advertisement would be for the purpose of directing or soliciting customers to the product or service prominently shown in the advertisement. If ordinary parlance meaning is not given to the word advertisement in Section 328A it will create anomalous position, in as much as a simple name board put on the house to indicate who is residing in the premises, would also be an advertisement; a name board or sign board of a trader visible to the public or identifying the place of business would also be an advertisement. In our considered opinion advertisement within the meaning of Section 328A of the Corporation Act must primarily have the commercial purpose and should be indicative of business activity of the displayer with a view to attract the attention of people to its business.

In the present case the appellant has put up an illuminated ATM board at various sites and as per the appellant it has been put only to tell the existing customers and others about the location of the ATM centers, which in itself is in the interest of public at large and not to attract new customers for opening the bank account. Normally, the ATM centers enable the customers to carry out the banking activities or transactions at any time, day or night and even on gazetted holidays. They are in the nature of public service as they enable the customers to do away with the need to keep large sum of cash in their house; they are able to have access to the money in their account even on holidays and emergency. The ATM centers have a sign board over them that are illuminated and tell about the fact that there lies the ATM Center of the bank in that premises. The fact that there is an ATM center in the premises tells that the appellant bank is providing Automatic Teller Machine service there and hence the service provider is clearly identified. The communication in this is direct to the account holders and also the prospective account holders. The kind of information supplied of the location of the service provided may also be construed of commercial exploitation indirectly, as the sign boards may not aim at the existing customers only but they may also affect the decisions of the prospective customers. They tell the prospective customers that

the service of the ATM round the clock is being made available by the appellant bank which would influence the prospective customers to make a decision about which service provider he or she has to choose. The sign board also helps the people to find out which bank is offering better services as compared to the other bank. The fact that a Bank has more ATM centers than the other banks, in the competitive trade and business, provides the incentive to the people to choose that Bank. The fact that one bank has an ATM center in the given location helps them to get more account holders in that area. This also serves the commercial interest of the bank. Whether particular action is an advertisement or not would depend on whether the person wants to promote directly or indirectly his product or service. If by any communication, the communicator tries to influence the people to buy his product or service or attract towards his product or service then it would be a guiding factor to identify whether a particular communication of the communicator tantamounts to be an advertisement.

From the aforesaid analysis, in all fact situation and circumstances, at the outset it cannot be said that the sign boards indicating ATM centers cannot have commercial interest but would only tell about the location of the ATM centers to the existing account holders only. Whether signboard of ATM Centre tantamounts to be an advertisement or not would depend upon the facts of each case, depending on the number of ATM centers established by a particular bank in a particular locality or place or even city, to have the flavour of commercial or business interest of the service provider. In the present case no exercise was undertaken by the municipal authorities or the Bombay High Court before the High Court had reached to the conclusion that the sign boards of the ATM center put up by the ICICI bank at different locations would be an advertisement within the meaning of Section 328A of the Corporation Act. In fact the notices issued by the bank to the appellant are under Section 328, 328A of the Corporation Act. The reach, ambit and scope of these sections are quite different and they operate in different fields. They do not completely overlap. In the circumstances, it was appropriate for the Corporation to issue notices to the appellant either under Section 328 or under Section 328A of the Corporation Act and notice should not have been issued under both Sections for the same sign board. The Bombay Municipal Corporation Authorities seem to be in a state of doubt and hence the notices clearly do not specify under which section they propose to take action. As we have made it clear that in the present case the sign boards of ATM centers, which are not sky signs, are not covered under the provisions of Section 328 of the Corporation Act, the notices issued shall be deemed to have been issued under Section 328 A of the Corporation Act and the Corporation shall decide the question of advertisement under Section 328A of the Act after indicating the bank a fresh date of hearing.

For the reasons stated above the appeal is allowed and judgment and order of the High Court is set aside. Fresh steps can be taken in the light of the observations in this judgment. In the circumstances of the case we do not impose any cost and the parties shall bear their own costs.

JUDIS