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20.09.2023
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High Court at Calcutta
In the Circuit Bench at Jalpaiguri

MAT 49 of 2023
with
IA No: CAN 1 of 2023
with
C.A.N. 2 of 2023

Sri Umananda Roy
-Vs.-
Union of India & Ors.

Mr. Shib Shankar Banerjee,
Ms. Suman Sehanabis
...for the appellant

Mr. Bikramidtya Ghosh
....for the HPCL

Ms. Supriya Singh
....for the NHAI

- 1.** Learned counsel for the appellant/petitioner has made out sufficient reasons for condoning the delay in preferring the appeal.
- 2.** Accordingly, C.A.N. 2 of 2023 is allowed, thereby condoning the delay in preferring the appeal.
- 3.** There will be no order as to costs.
- 4.** M.A.T. 49 of 2023 is taken up for admission hearing.
- 5.** Learned counsel for the appellant argues that the restriction regarding setting up of

facilities within 300 meters of an intersection in a Highway is applicable not by taking an aerial perspective but has to be construed on a pragmatic approach. It is submitted that the appellant's facility is situated about 5 kilometers away from the U-turn on the National Highway. Although the same is situated within 300 meters of the Highway, it is submitted that the same is on the opposite side of the location where the traffic merges and, as such, would not create any hindrance to the smooth flow of the traffic. Accordingly, it is submitted that the view taken by the learned Single Judge was perverse.

- 6.** Upon going through the impugned order, we find that the learned Trial Judge took into consideration the restriction-in-question and specifically observed that the retail outlet cannot be permitted to be set up within 300 meters of an intersection. It was further found that it makes no difference if the retail outlet site falls on the same or the opposite side of the intersection.

- 7.** It is the discretion of the authorities to fix the restrictions. Since no argument of unreasonableness has been made and a particular interpretation has been lent to the provision by the learned Single Judge, we are not inclined to interfere in appeal, even if on the facts a second view could have been possible. It is well-settled that in intra court appeals, interference cannot take place merely because the view of the appellate court is to be substituted for that of the trial court.
- 8.** In such view of the matter, M.A.T. 49 of 2023 is dismissed without, however, any order as to costs.
- 9.** IA No. C.A.N. 1 of 2023 is accordingly disposed of.
- 10.** Urgent certified copies of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)