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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L.) NO.3226 OF 2016

M/s. New Arti Dairy

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

Mr. Rupesh Lanjekar i/by Mr. Janardan Prasad Singh for the Petitioner.
Mr. A.I. Patel, Additional Government Pleader for the Respondent Nos.1
to 3.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 7th DECEMBER, 2016

PC.

. Not on board. Taken on board.

1 This Petition was heard earlier. Forthwith taken up for final disposal. The challenge in this Petition under Article 226 of the Constitution of India is to the order dated 21st November, 2016 passed by the Appellate Authority by which the Appeal preferred by the Petitioner has been dismissed. The Appeal was preferred under Section 34 of the Food Safety and Standards Act, 2006 (for short “the said Act of 2006”).

2 Certain deficiencies were pointed out to the Petitioner by the notice dated 26th February, 2016. As the Petitioner did not respond to the said notice, action of suspension of license was taken against the Petitioner. The license was ordered to be suspended for a period of 30 days. The said order was challenged before the Appellate Authority. The Appellate Authority dismissed the Appeal preferred by the Petitioner by order dated 28th October, 2016. By the impugned order, the prayer made by the Petitioner for review of the order of the Appellate Authority has been rejected.

3 We have perused both the orders of the Appellate Authority. It is not in dispute that after 16th April, 2016, there was no inspection carried out of the business premises of the Petitioner by any officer with a view to ascertain whether the Petitioner has taken steps to cure all the illegalities or irregularities set out in notice dated 26th February, 2016. Neither during the pendency of the Appeal nor during the pendency of the review application, the Appellate Authority ordered inspection of the premises of the Petitioner.

4 The Petitioner has tendered written undertaking duly signed by him and his Advocate which is marked as 'X-1' for identification. He has filed undertaking to keep his business closed on

29th and 30th December, 2016. We accept the said undertaking.

5 As inspection of premises of the Petitioner has not been carried out after 16th April, 2016 and in view of the undertaking, it will be appropriate if the application for review is reheard after a fresh inspection is carried out.

6 Hence, we pass the following order :-

ORDER

- (i) We accept the undertaking of the Appellant tendered across the bar and marked 'X-1' for identification. We direct the Appellate Authority to depute appropriate officer to visit the business premises of the Petitioner on 29th December, 2016 and 30th December, 2016 to ascertain whether the Petitioner has made compliance with the undertaking;
- (ii) The order dated 21st November, 2016 passed by the Appellate Authority on the review application is hereby set aside and Review Application No.32 of 2016 is restored to the file of the Appellate Authority;
- (iii) We direct the Appellant to personally remain present before the Appellate Authority on 5th January, 2017 at

11.00 am;

- (iv) The Appellate Authority shall direct inspection of the business premises of the Petitioner through any competent officer. After considering inspection report and after giving an opportunity of being heard to the Petitioner, the Appellate Authority shall decide the Review Petition on merits. Petition shall be decided as expeditiously as possible and preferably within a period of three months from 5th January, 2017;
- (v) We make it clear that if the Petitioner fails to abide by the undertaking which is accepted by this order, the Review Petition will stand dismissed and it will be open for the Appellate Authority to re-schedule the period of suspension of license of the Petitioner;
- (vi) The Petition is disposed of on above terms;
- (vii) All concerned to act upon an authenticated copy of this order.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)