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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 357 OF 2015
WITH
CRIMINAL APPLICATION NO. 358 OF 2015**

Nitin Mehta and another ... Applicants

Versus

State of Maharashtra and anr. ... Respondents

Smt. Mallika Ingale for the applicants.

Smt. A.A. Mane, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : APRIL 21, 2015**

P.C.

Admit. Heard finally.

2. Heard the learned counsel for the applicant and learned A.P.P. for the State.

3. Since the matters pertain to forfeiture of bond and cancellation of warrant, respondent no. 2 is not necessary party in the proceedings. The applicants are directed to delete the name of respondent no. 2 immediately.

4. I have gone through the impugned orders. The applicants are accused before the State Consumer Dispute Redressal Commission, Maharashtra State, Mumbai and are facing trial for the offence punishable under Section 27 of the Consumer Protection Act. The impugned orders came to be passed in both the cases on 6th April, 2015. The applicants were absent before the court and therefore, the court directed that their bonds of Rs.15000/- each be forfeited and that they shall furnish fresh P.R. Bonds of Rs.25,000/- each with one solvent surety in the like amount on or before the next date of hearing i.e. on 24th April, 2015.

5. I have heard the learned counsel for the applicants and learned A.P.P. In my opinion, the order passed by the learned Presiding Member is arbitrary and calls for interference. The procedure is laid down under section 446 of the Code of Criminal Procedure when the bond is forfeited. Bond comes to be forfeited when the conditions of the bond are not complied with. In this case the bond for appearance of a person stands forfeited on non-appearance. The question therefore, in such cases, may arise as to what extent the penalty should be imposed. As already stated the procedure is laid down under section 446 of the Code of Criminal Procedure for imposing penalty. Section 446 (1) and (2) can be reproduced as under :

“446. Procedure when bond has been forfeited.

(1) Where a bond under this Code is for appearance, or for production of property, before a court and it is proved to the satisfaction of that court or of any court to which the case has subsequently been transferred, that the bond has been forfeited,

or where in respect of any other bond under this Code, it is proved to the satisfaction of the court by which the bond was taken, or of any court to which the case has subsequently been transferred, or of the court of any Magistrate of the first class, that the bond has been forfeited,

the court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation. A condition in a bond for appearance, or for production of property, before a court shall be construed as including a condition for appearance, or as the case may be, for production of property before any court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same, as if such penalty were a fine imposed by it under this Code:

¹[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]”

6. It can be seen from the section that the court may call upon the person bound by the bond to pay penalty or may issue show cause notice as to why the same should not be paid. Normally, keeping in view the principles of natural justice, show cause notice is issued before imposing the penalty. In the present case also, learned Member could have issued show cause notice to the applicants calling upon them as to why the penalty to the extent of bond should not be imposed on them. Learned Member could have considered the reply filed by the applicants and could have imposed the penalty in his

discretion and could have remitted the balance of the amount. As such in my opinion, the procedure followed by the Member does not appear to be judicious and the order needs to be set aside. Hence, I pass the following order :

(a) The orders passed in Execution Application No.26 and 27 of 2009 directing the applicants to pay Rs.15,000/- each are set aside.

(b) Learned Member is directed to issue show cause notice to the applicants calling upon them to explain as to why a penalty to the extent of bond amount should not be imposed on them. He shall consider the reply if any submitted by the applicants and shall decide the amount of penalty to be imposed. Till the final order in respect of imposition of penalty are passed, the applicants shall be released on P.R. Bond of Rs.25,000/- each without surety.

(c) Learned Member shall be at liberty to pass further orders in respect of the surety bond etc. after the decision on the forfeiture of earlier bonds. Both the applications are disposed of accordingly.

(JUDGE)