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## CASE ANALYSIS: MOHORI BIBEE V DHARMODAS GHOSE

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### ABSTRACT

This case is of the point whether the agreement or contract entered by a minor is void or voidable? The question also arises that whether a minor who is not competent to contract, when enters in one then what all situations and circumstances may arise. <sup>1</sup>

As per Section 3 of the India Majority act, 1875 states that a person is a minor is one who has attained the age of 18 and with an exception to the cases wherein the court has appointed a guardian then that person is said to attain majority at the age of 21. <sup>2</sup>

Although, as per the Indian contract act, 1872 and section 11 the parties who are competent to contract includes everyone with three exceptions: minor, person of unsound mind and a person forbidden by law.

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<sup>1</sup> R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2017), Reprint in 2020

<sup>2</sup> Indian Majority Act 1875

### Parties related to the case

1. Dharmodas Ghose –Plaintiff, minor
2. Mohori Bibee – Wife of Brahma Dutt and his legal representative of the case
3. Brahma Dutt- The moneylender who entered in contract with minor
4. Kedar Nath- Attorney, agent of Brahma Dutt

### Facts

Dharmodas Ghose is the plaintiff and Mohori Bibee is the defendant but she is the executive and legal representor of Brahma Dutt. The plaintiff is a minor and if he enters any contact so it will be void ab initio but he enters in a contract by misrepresenting his age and him being a major. He entered in a contact to mortgage his property in favour of a moneylender named Brahma Dutt. The deal between the two was that an amount of loan was to be given by defendant in return or in lieu of the property mortgaged.<sup>3</sup>

The amount of loan was Rs. 20,000. A part of this money value had already been transferred to plaintiff by the attorney. This relation states that if on principal's behalf agent carries on transaction and if any information is passed to agent, it is received by the principal also. Half of the deal was executed; the attorney comes to know that defendant was a minor as informed by his mother via a letter stating that any contract entered with him will be the responsibility of the person himself or herself.<sup>4</sup>

Principal and agent relationship is one which existed between moneylender and attorney. The attorney, Kedar Nath acted on behalf of the moneylender.<sup>5</sup>

At the same time, the minor played the card to cancel the contract as it was not for necessities and him being a minor, the contract stands void. But while an appeal was being made against plaintiff, unfortunately the moneylender died but the same case was executed further by his executive that is his wife Mohori Bibee.<sup>6</sup>

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<sup>3</sup>R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2017), Reprint in 2020

<sup>4</sup>Avtar Singh, Contract & Specific Relief Eastern Book Company Twelfth Edition (2017)

<sup>5</sup> Case Analysis- Mohori Bibee v. Dharmodas Ghose, Simran, available at [www.legalservicesindia.com](http://www.legalservicesindia.com) , last visited on 27 February,2021.

<sup>6</sup> R.K BANGIA Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2017), Reprint in 2020

A part of the loan that is Rs 10,500 had already been given to the minor and the request or main issues was that then this amount should be returned which was advanced to the plaintiff.<sup>7</sup>

The rate of interest on loan of Rs 20,000 being 12%. On September 10,1885, defendant with his mother bought a legal action stating that since he is a minor so the contract cannot be executed.<sup>8</sup>

### Issues Raised

1. The law of estoppel should be made applicable, the minor had received advantages and benefits by fraudulently misrepresenting his age. And no relief should be given to him.
2. If mortgage has been nullified or cancelled so minor should pay Rs 10,500 as advanced by the moneylender. This was under Specific Relief Act 1877 (Section 39 and 41).<sup>9</sup>
3. He had also raised refunds on the grounds of section 64 and section 65 of the Indian contract act 1872.<sup>10</sup>
4. Whether deed was void under section 2, 10(5), 11(6) of contract act or not?
5. Whether the mortgage that defendant had commenced was voidable or not? <sup>11</sup>

### Judgment

Section 64 of the Indian contract act 1872 states that if a person who had the right to rescind a contract does so then in that case, he or she shall restore back the benefits received out of such a contract.<sup>12</sup>

But the section could not be applied to the given case because as per Privy Council the section stands applicable to agreements but an agreement with minor is void. A similar statement was for no application of section 65 was stated the agreements which have a legal backing that is contract but a contract with minor is void. <sup>13</sup>

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<sup>7</sup> Case Note: Mohori Bibee v. Dharmodas Ghose (1903) 30 Cal. 539, Nihal Chhetri, available at [www.latestlaws.com](http://www.latestlaws.com), last visited on February 28, 2021.

<sup>8</sup> Case Analysis- Mohori Bibee V/Dharmodas Ghose, Simran, available at [www.legalservicesindia.com](http://www.legalservicesindia.com), last visited on February 28,2021.

<sup>9</sup> R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2017), Reprint in 2020

<sup>10</sup> Avtar Singh, Contract & Specific Relief, Eastern Book Company Twelfth Edition (2017)

<sup>11</sup> Case analysis- Mohori Bibee V/ Dharmodas Ghose, Simran, available at [www.legalservicesindia.com](http://www.legalservicesindia.com), last visited on February 28,2021.

<sup>12</sup> Indian Contract Act, 1872

<sup>13</sup> Avtar Singh Contract & Specific Relief, Eastern Book Company Twelfth Edition (2017)

Section 65 of the Indian Contract Act, 1872 states that an agreement is found to be void or contract becomes void, any person who has received any benefits or profits or advantages under such agreement or contract is bound to restore it or provide compensation to the other person.<sup>14</sup>

Law commission of India disagreed with this statement given because the case of minor is covered under section 65. In a case a minor represents him to be major he is supposed to pay compensation. They had the opinion of agreement to be void due to the incompetency of one of the parties.<sup>15</sup>

Hence, minor cannot be forced to compensate and pay back the money that was partial payment of loan secured because the promise executive in the contract did not hold him bound or responsible.<sup>16</sup>

Law of estoppel should be applied on the minor was the moneylender's contention. The council had rejected, and minor could plea that he was minor at the time of agreement. Also, it was known to the agent of defendant that he is a minor by the letter. In case of relationship between principal and agent, if any information is passed to agent, it is assumed to be received by the principal also. So as per section 115 of the Indian Evidence Act, estoppel cannot be applied as the information about the age was made to one person who knew the reality so there was no misleading.

Estoppel cannot be applied where truth is known to both the parties. As per section 115 of estoppel, if one person makes a claim then he/she cannot deny the truth of such statement passed if that statement resulted in misleading one person. After various decisions we conclude that estoppel cannot be applied to minor, and he cannot be stopped from claiming that he is a minor.

Under special relief act 1877 (section 41), it requires one party to compensate to the other on cancellation of an instrument. But in this case, the amount advanced was with full knowledge of the minor. Hence, this claim was not allowed. Under Section 41, two courts namely Lahore High Court and Allahabad High court had expressed their views.

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<sup>14</sup> Indian Contract Act, 1872

<sup>15</sup> R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2017), Reprint in 2020

<sup>16</sup> Case Analysis- Mohori Bibee V/Dharmodas Ghose, Simran, available at [www.legalservicesindia.com](http://www.legalservicesindia.com) , last visited on March 1, 2021.

### **Lahore High court**

A similar case of Khan Gul v Lakha Singh was heard by the court where a minor had been given Rs. 17,500 as advance and minor was held liable to compensate the same on two grounds;

1. Court held that when a minor has gone to the court as a plaintiff then the court may ask minor to pay compensation but in case, he was defendant but was still held liable to pay the damages. Hence, court said that minor is plaintiff or defendant he should return the benefits received.
2. The amount of cash received should also be returned along goods.

### **Allahabad High Court**

1. Regarding minor's responsibility to compensate, it was held that minor cannot be asked to give relief when minor is defendant.
2. Sir Sulaiman expressed his disagreement stating that if transfer of property is void and property can be traced so it belongs to promise. But if it cannot be traced and only option to restore is by payment of cash then it cannot be enforced. There is a reference to Leslie V Sheile which states that a fraudulent minor can be asked to pay back the property that is in his hands currently but not any amount of cash since it is not traceable and forcing the minor to pay the amount would be enforcement of an agreement which is void prima facia.<sup>17</sup>

The Law Commission reports have preferred the views of Sir Shadi Lal of Lahore High Court on both points. Hence, permitting an action against fraudulent minor is in favour ignoring whether he is plaintiff or defendant. The law commission had the views that "considering points of Sir Shadi Lal in Lahore Case of Khan Gul v Lakha Singh, we have recommended the doctrine of unjust enrichment to be accepted". The doctrine states that it should not depend on the fact that whether a person has come as plaintiff or defendant to restore the unjust benefits. Therefore, the commission recommended that a sub section should be included in the new provision suggested that defendant successfully resists a case on the basis that contract is void because of incapability of one party at the time of entering in contracts, but he must restore the benefits in such cases. And the same is application for person with unsound mind.<sup>18</sup>

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<sup>17</sup> R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2017), Reprint in 2020

<sup>18</sup> Report on the limitation Act- Third report of law commission

## **Present situation in India regarding minor agreement**

The principle of compensation has been incorporated with section 33 of Special Relief Act 1963. This now requires the minor to pay compensation irrespective of him being plaintiff or defendant. English law is not applicable now that means compensation in can be taken.<sup>19</sup>

Section 70 of the Indian Contract Act 1872 recognises quasi contractual liability to compensate a person who has suffered the cost for enjoyment of benefit by other party. The section states that is a person does something not out of gratitude but enter in a profit or trade relation and the moment it becomes void so benefits supplied by the person must be restored.<sup>20</sup>

But minor has been excluded from this section and it cannot be applied or invoked against minor.<sup>21</sup>

An infant cannot be allowed by the court of equity to take advantage of his own fraud.<sup>22</sup>

### **Agreements that a Minor can enter.**

1. Marriage: If a minor enters in a contract of marriage, then the contract is not void.
2. Partnership: A minor can be a part of partnership for his benefits that is to get all the profits and gains of the partnership but will not pay for losses. Section 4 of the Indian Partnership Act says that minor cannot enter in partnership but section 40 states that minor can be entered to enjoy the benefits of partnership.
3. Necessities: necessities differ for every person that is necessity for one may be luxury for another but a minor if has been supplied for necessities of life then he can be held liable for the compensation.

### **Conclusion**

1. It stated that a contract with minor is void ab initio so there should have been no commencement of contract after knowing this fact.

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<sup>19</sup> R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2017), Reprint in 2020

<sup>20</sup> Indian Contract Act, 1872

<sup>21</sup> Bankey Behari Prasad V Mahendra Prasad AIR 1940 Pat 324: State of west Bengal V BK Mondal & Sons, AIR 1962 SC 779

<sup>22</sup> Avtar Singh, Contract & Specific Relief, Eastern Book Company Twelfth Edition (2017)

2. Equitable doctrine of restitution as per English law stating compensation cannot be asked back from minor is not applicable.<sup>23</sup>
3. Principle of estoppel is not applicable in case of minor. Firstly, to protect the right of minor and secondly the minor may not be able to understand and comprehend things prudently and reasonably like a major.
4. Although a minor cannot enter a promise, but he can be a promisee in whose benefit is the promise made.
5. A contract entered by minor for necessities (food, shelter, clothing, education etc.) can be one where other party can claim compensations.<sup>24</sup>

### **Author's Views**

The author's opinion is similar to the law commission of India. In my opinion a minor who does fraud and misrepresents his age should return all the benefits that he has got because otherwise the other party will suffer damages due to minor's fault.

But the damages cannot be in terms of cash but kind (property, jewellery, object of contract) because enforcing to pay in monetary terms will enforce the agreement which is void ab initio.

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<sup>23</sup> Case Note: *Mohori Bibee v. Dharmodas Ghose* (1903) 30 Cal. 539, Nihal Chhetri, available at [www.latestlaws.com](http://www.latestlaws.com), last visited on March 2, 2021.

<sup>24</sup> What is the minor's position in the law of contract? Law corner, available at [www.lawcorner.in](http://www.lawcorner.in), last visited on March 3, 2021