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## CASE COMMENTARY: MOHORI BIBEE & Ors. V/S DHARMODAS GHOSH

~ Vansh Kapila

### ABSTRACT

This landmark judgment formed one of the basic foundational principles concerning the essentials of the Indian Contract Act. The judgment deals with the question of a contract with a minor, which is void ab initio (void from the very beginning).

It was decided in this particular case that a contract with a minor is void. The age of majority is defined under section 3 of the Indian Majority Act<sup>1</sup> which specifically states that *every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.*

A contract with a minor is not valid because a minor is not considered to be competent to enter into a contract and therefore does not fulfill the essentials of the contract provided under section 10 of the Indian contract act<sup>2</sup>.

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<sup>1</sup> Indian Majority Act 1875

<sup>2</sup> Indian Contract Act 1872

Competency to enter into a contract is defined under section 11 of the Indian Contract Act<sup>3</sup>, which states that one should be a major, of sound mind, and should not be disqualified by law or insolvent in order to enter into a contract.

## **PARTIES RELATED TO THE CASE**

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

## **HON'BLE JUDGES/CORAM:**

Lord Macnaghten, Lord Davey, Lord Lindley, Sir Ford North, Sir A. Scoble and Sir A. Wilson

## **COURT :**

Judicial Committee Of The Privy Council

## **BACKGROUND OF THE CASE**

The case Mohori Bibee v. Dharmodas Ghosh<sup>4</sup> revolves around a dispute regarding a mortgage transaction involving a minor. It dates back to the late 19th century, and the decision was made by the Privy Council in 1903. The case is significant, particularly concerning the legal capacity of minors to enter into contracts.

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<sup>3</sup> Indian Contract Act 1872

<sup>4</sup> 7CWN441, (1903)L.R. 30 I.A. 114, 30M.I.A.114

## FACTS OF THE CASE

- Dharmodas Ghose (Plaintiff) , who was a minor, and Mohori Bibee (Defendant) , who is the executive and legal representative of Brahmo Dutt entered into a contract on 20<sup>th</sup> July 1895, Dharmodas Ghose executed a mortgage in favor of Brahmo Dutt, who was a money-lender, to secure repayment of loan at 12% interest. 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>5</sup>
- The amount of loan was Rs. 20,000. A part of this money value had already been transferred to the plaintiff by the attorney. This relation states that if on the principal's behalf agent carries on the transaction and if any information is passed to the agent, it is received by the principal also. Half of the deal was executed; Kedar Nath, the attorney was informed by Jogendra Nandhinee Dasi, who was the mother and legal guardian of Dharmodas that her son is a minor via a letter stating that any contract entered with him would be the responsibility of the person himself or herself.<sup>6</sup>
- Then On September 10, 1885, the defendant with his mother bought a legal action stating that since he was a minor the contract could not be executed<sup>7</sup>
- Therefore an appeal was filed against the plaintiff, unfortunately, the moneylender died but the same case was executed further by his executive that is his wife Mohori Bibee<sup>8</sup>.

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<sup>5</sup> R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2022)

<sup>6</sup> Avtar Singh, Contract & Specific Relief Eastern Book Company Twelfth Edition (2022)

<sup>7</sup> R.K BANGIA Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2022)

<sup>8</sup> R.K BANGIA Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2022)

## **Issues Raised**

1. Whether the deed was void under Sections 2, 10, and 11 of the Indian Contract Act, 1872 (ICA) or not?
2. Whether the defendant was liable to return the amount of loan which he had received by him under such deed or mortgage or not?
3. Whether the mortgage commenced by the defendant was voidable or not?

## **CONTENTIONS BY THE APPELLANT**

The appellant's arguments in Mohori Bibee vs Dharmodas Ghose are as follows:

1. They contented that the minor had fraudulently misrepresented his age, & this justifies the applicability of the law of Estoppel against the minor. Therefore, no relief should be granted to the minor in this case. Law of Estoppel is provided under section 115 of the Indian Evidence Act<sup>9</sup>. This section provides that if one person intentionally causes another person to believe something to be true through their actions, declarations, or omissions and that person acts on that belief, neither party nor their representatives can later deny the truth of that matter in any lawsuit or proceeding.
  2. If the mortgage is cancelled then he should be asked to refund the loan amount he has taken based on the rule of equity.
  3. They further contented that dharmodas should repay the amount in accordance with sections 64 & 38 of the Indian Contract Act<sup>10</sup> and under section 41 of the specific relief act<sup>11</sup>.
- Section 38 of the Indian Contract Act, 1872, stipulates that if a promisor offers to perform their part of the contract to the promisee and the offer is not

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<sup>9</sup> Indian Evidence Act 1872

<sup>10</sup> Indian Contract Act 1872

<sup>11</sup> Specific Relief Act 1877

accepted, the promisor is not held responsible for non-performance and they do not lose their rights under the contract.

- Section 41 of the Indian Contract Act, of 1872, specifies that when a promisee accepts the performance of a promise from a third party, they cannot subsequently enforce that promise against the original promisor.
- Section 64 of the Indian Contract Act, of 1872, states that when a person who has the option to void a contract chooses to rescind it, the other party to the contract is not obligated to fulfill any promises contained in the contract where they are the promisor.

## **CONTENTIONS BY THE RESPONDENT**

The respondent in response to the contentions made by the appellant further contended in the listed points:

1. Brahmo Dutta and his agent Kedar Nath were aware of the respondent's actual age.
2. Since the respondent was a minor when he entered the contract, therefore the contract is considered void.

## **JUDGEMENT**

The judgment in *Mohori Bibee vs Dharmodas Ghose* is as follows:

After carefully examining and considering all the facts of the case, The Privy Council ruled that the agreement with the minor is void ab initio which means it is void from the very beginning.

- The privy council rejected that the opinion minor has falsely represented the age but rather the Hon'ble council allowed the minor to plead that he was a minor at the time of agreement and the same was known to the defendant's agent

It was held that the law of estoppel as stated in section 115 Indian Evidence Act, was not applicable to the present case because in this case the statement about the age was made to a person who knew the real facts and was not misled by the untrue statements. It was observed:

“there can be no estoppel where the truth of the matter is known to both the parties and their lordships hold, that a false representation, made to a person who knows it to be false, is not such a fraud as to take away the privilege of infancy.”<sup>12</sup>

- In response to the contention of the appellant that the loan should be refunded in accordance with section 64 of the Indian contract act<sup>13</sup>, Which reads as under :

“When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained of which he is a promiser. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such a contract, restore such benefit so far as may be, to the person from whom it was received”

The Lordships observed that this section is applicable to voidable contracts whereas in the pertaining matter, minor’s agreement is void. Therefore , section 64 was not applicable to the case and hence , the minor was not asked to pay the said loan back<sup>14</sup>.

Application of section 65 of Indian Contract Act was also considered it reads as under:

“When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.”

It was observed by the Hon’ble Council that the said section is applicable only when the parties are competent to contract whereas in the pertaining case , one party being minor in the case makes this section inapplicable to

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<sup>12</sup> Ibid at Pg 122

<sup>13</sup> Indian Contract Act 1872

<sup>14</sup> Case analysis-mohori bibee V/S dharmodas ghose (no date) Legal Service India - Law, Lawyers and Legal Resources. Available at: <https://www.legalserviceindia.com/legal/article-232-case-analysis-mohori-bibee-v-s-dharmodas-ghose.html> (Accessed: 01 June 2024).

the instant matter The minor; therefore, could not be asked to repay the amount even under section 65.

The appellant also claimed the mortgage under section 41 of the Specific Relief Act 1877 , which read as under :

“On adjudging the cancellation of an instrument, the court may require the party to whom such a relief is granted to make any compensation to the other which justice may require.”

As regards to this section, it gives discretion to the court to order compensation, but in consideration of the circumstances of the case, the council observed that the money advanced to the minor with the full knowledge of the infancy of the plaintiff. The claim for refund under the specific relief act was therefore disallowed.

Hence , all the contentions made were rejected by the council , and the minor’s agreement was held void. It was held that the minor could not be asked to repay the loan and therefore rejected the appeal.

## ANALYSIS

In the case of Mohori Bibee V/S Dharmodas Ghose<sup>15</sup>, the Privy Council defined that any sought of contract or agreement with a minor or with any infant shall be null and void. All contacts with the minors will be void ab initio. Majority Act, of 1875 outlined the definition of a minor, according to such act, any person who is below the age of 18 years or has not completed the age of 18 years shall not be competent to create or enter into any sought of contract or agreement.

Furthermore, in addition to the same, the court also held that sections 64 and 65 of the Indian contract should not be applicable in void agreement. However, this interpretation was rejected by the law commission given by

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<sup>15</sup> 7CWN441, (1903)L.R. 30 I.A. 114, 30M.I.A.114

the privy council to section 65. In the view of the law commission<sup>16</sup>, a minor, who falsely misrepresented the age should be asked to pay compensation. Recommendation was given to add an application of section 65 to give effect to their opinion.

However, no such amendment has been made in the Indian Contract Act in order to give effect to the recommendation of the law commission.

The law of estoppel was not applied as the council had rejected it, and the minor could plea that he was a minor at the time of agreement. Also, it was known to the agent of the defendant that he was a minor by the letter. 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.<sup>17</sup>

Estoppel cannot be applied where the truth is known to both the parties. In *Mohori Bibee vs Dharmodas Ghose* doctrine of estoppel was not applied as the other party was aware of the minority of the plaintiff. The court held concerning issue two that minors who fraudulently misrepresent themselves to be a major (whether plaintiff or defendant) can refuse to perform the contractual obligation but at the same time in equity cannot retain the benefit derived out of the void agreement after taking reference from precedent judgments.<sup>18</sup>

In consideration to the application of Special Relief Act 1877 (section 41), it requires one party to compensate the other on cancellation of an instrument. Hence, this claim was not allowed in this case as it was under the knowledge of the other party that he was a minor. Under Section 41, different views have been expressed by the Lahore High Court and Allahabad High Court.

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<sup>16</sup> Law Commission of India, 13th Report, on Indian Contract Act, 1872.

<sup>17</sup>Case analysis-mohori bibee V/S dharmodas ghose (no date) Legal Service India - Law, Lawyers and Legal Resources. Available at: <https://www.legalserviceindia.com/legal/article-232-case-analysis-mohori-bibee-v-s-dharmodas-ghose.html> (Accessed: 01 June 2024).

<sup>18</sup> <https://articles.manupatra.com/article-details/Case-Note-Minors-An-Exception-To-Contract-In-Light-Of-Khan-Gul-Vs-Lakha-Singh-1928-Lahore-High-Court->



## **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 the minor was held liable to compensate the same on two grounds;

1. The court held that though a minor cannot be held liable for damages if he is a defendant, the court may order him to make compensation if a minor has appeared as a plaintiff. Therefore he must pay back the benefits he got as he can appear as both plaintiff and defendant.
2. Along with the goods, the amount of cash received should also be returned.

## **ALLAHABAD HIGH COURT**

1. Regarding the minor's duty to compensate, it was held that when the minor is defendant he has no obligation to pay relief.
2. Sir Sulaiman expressed his concern stating that if the transfer of property is not valid and property can be traced so it belongs to the promise. But if it cannot be traced then it cannot be enforced and can only be restored by payment in cash. Leslie V Sheile was referred in which it was held that a fraudulent minor can be asked to pay back the property that is in his hands currently however 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 facie.<sup>19</sup>

The Law Commission has favored the views of Sir Shadi Lal from the Lahore High Court on both issues. Consequently, it supports permitting legal action against a fraudulent minor, regardless of whether they are the plaintiff or defendant. The Commission noted, "Taking into account Sir Shadi Lal's opinions in the Lahore case of Khan Gul v. Lakha Singh, we have endorsed the acceptance of the doctrine of unjust enrichment." This doctrine asserts that the requirement to return unjust benefits should not hinge on whether the individual is the plaintiff or defendant. Therefore, the Commission recommended including a subsection in the proposed provision. This

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<sup>19</sup> R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2022)

subsection would stipulate that if a defendant successfully argues that a contract is void due to one party's incapacity at the time of entering the contract, they must still return any benefits received. This recommendation similarly applies to individuals of unsound mind<sup>20</sup>.

## **PRESENT SITUATION IN INDIA REGARDING THE MINOR AGREEMENT**

The principle of compensation has been provided in section 33 of the Special Relief Act 1963. Irrespective of the plaintiff and defendant, a minor is required to pay compensation. English law is not applicable now which means compensation may be sought<sup>21</sup>.

Section 70 of the Indian Contract Act 1872 provides for quasi-contractual liability to compensate a person who has incurred costs for the benefit of another party. The section states that if a person does something not out of gratitude but enters into a profit or trade relation, and the contract becomes void, the benefits supplied by the person must be restored.<sup>22</sup>

But minor has been excluded from this section and it cannot be applied or invoked against minor.<sup>23</sup>

The court of equity cannot allow an infant to take advantage of his own fraud.<sup>24</sup>

## **AGREEMENTS THAT A MINOR CAN ENTER**

There are certain exceptions according to which a minor can enter into a contract as listed below:

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<sup>20</sup> Report on the limitation Act- Third report of law commission

<sup>21</sup> R.K BANGIA, Contract, ALLAHABAD LAW AGENCY, SEVENTH EDITION (2022)

<sup>22</sup> Indian Contract Act, 1872

<sup>23</sup> Bankey Behari Prasad V Mahendra Prasad AIR 1940 Pat 324: State of west Bengal V BK Mondal & Sons, AIR 1962 SC 779

<sup>24</sup> Avtar Singh, Contract & Specific Relief, Eastern Book Company Twelfth Edition (2022)

1. Marriage: the contract is not void if a minor has entered into a contract of marriage
2. Partnership: Under the Indian Partnership Act<sup>25</sup>, a minor is not allowed to enter into a partnership. However, Section 40 of the Act specifies that a minor can still be a part of a partnership to receive benefits, such as profits and gains, without being held responsible for any losses incurred.
3. Necessities: Necessities differ for every person. What is a necessity for one may be a luxury for another, but if a minor has been supplied with the necessities of life, then he can be held liable for compensation.

## CONCLUSION

1. It stated that a contract with a minor is void ab initio so there should have been no commencement of contract after knowing this fact.
2. Equitable doctrine of restitution as per English law stating compensation cannot be asked back from a minor is not applicable.<sup>26</sup>
3. The principle of estoppel does not apply to minors. This is because minors need protection for their rights, and they may not have the same level of understanding as adults.
4. Although a minor cannot make a promise, they can be the beneficiary of a promise.
5. A contract entered into by a minor for necessities (such as food, shelter, clothing, and education) may allow the other party to claim compensation.<sup>27</sup>

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<sup>25</sup> The Indian Partnership Act 1932

<sup>26</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 June 1, 2024.

<sup>27</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 June 1, 2024.