C-17

A Contract with Minor: Landmark Judgement

[1]Dr. NIDHI JAIN
Assistant Professor, School of Management Sciences,
Apeejay Stya University, Gurugram, Haryana

Ch.Id:-ASU/NSP/EB/ SBP /2022/Ch-17

doi: https://doi.org/10.52458/9789391842536.nsp2022.eb.asu.c17

INTRODUCTION OF THE CASE:

Law deals differently with minors and majors. In India, a minor is a person who has not attained the age of 18 years. It is a general acceptance that minor does not possess the mental capacity to accomplish certain tasks and duties. Legally, this maturity level is supposed to be attained over the age of 18, i.e., an individual over the age of 18 has acquired required cognitive. The legal regulations set the age of 18 as a limit, and a minor cannot become liable for certain responsibilities.

The contract law of India, in The Indian Contract Act of 1872, articulates the capacity of an individual to enter into a contract which explains that a minor is incompetent to enter into a contract. This implies that if an individual is minor at the time of entering into a contract, then that contract will not have any legal status and cannot be enforced. Numerous times, Indian courts have affirmed this standpoint. To illustrate the stance, the judgment of Case: *Mohori Bibee* v *Dharmodas Ghose* is discussed in the following text.

The judgement of the case was held in 1903. Parties involved in the case were Mohori Bibee and Dharmodas Gosh. Mohori Bibee was appellant and Dharmodas Ghose was respondent in the case.

In the case, The Privy Council held that a contract with minor is void-ab-initio means void from the very beginning. As per 'The Majority Act, 1875' any individual who has not attained the age of 18 (Eighteen) is to be considered a minor.

Facts of the case: On July 20, 1895, the plaintiff Dharmodas Ghose who had not attained the age of majority as per the majority Act 1875; carried out a mortgage deed with Brahmo Dutt; a money lender running business in Calcutta and elsewhere but the business was handled by his attorney Kedar Nath Mitter. Brahmo Dutt was not in the city throughout the transaction.

The plaintiff Dharmodas mortgaged his house for the repayment of Rs. 20,000 at the rate of 12% interest and the amount increased in the case. Dharmodas was a minor at the time of execution of mortgage deed and attorney of Brahmo Dutt was aware of this as he personally received the information about minority of Dharmodas Ghose through a letter sent by Bhupendra Nath Bose, an attorney. Thus, the rule of estoppel prescribed under Sec. 115 of Indian Evidence Act,1872 was not applicable in this case. The rule of estoppel states that when an individual declares, act or intentionally allows others to believe a thing to be true and to act on such belief, he cannot deny or refuse to accept that thing.

On September 10, 1895, an action was taken against money lender (Brahmo Dutt) by Dharmodas Ghose (minor earlier) and his mother, which demanded for the declaration of contract as void, because of respondent's minority. Money lender (Brahmo Dutt) had died during this appeal. So, his case was defended by his wife, Mohori Bibee.

ISSUES BEFORE THE COURT:

- As per Indian Contract Act 1872, was the deed void or not?
- Whether the minor (Dharmodas Ghose) was legally responsible to return the amount of advance which he had received from money lender (Brahmo Dutt) under such mortgage deed or not?
- Whether the mortgage deed was voidable or not?

PLEAS AND ARGUMENTS BY APPELLANT & DEFENDANT:

- Plea: Rule of Estoppel: When a person made a promise to execute the contract to another person, which he is incompetent to execute at a time, then later when he attains the competency he cannot deny on the ploy of incompetence.
- Argument: Brahmo Dutta and his agents Kedar Nath possessed knowledge of the respondent's actual age. Since, the party was a minor at the time of executing the mortgage contract, the contract was void ab initio.
- Judgement: As per the decision of Privy Court, Rule of Estoppel is not applicable in the above case and ruled that contract between minor parties is void and the money lender was aware with the facts that the party involved in the contract is minor.

ISBN: 978-93-91842-53-6

CONCLUSION:

Firstly, the Court granted relief to the minor (Dharmodas Ghose) and then the money lender (Brahmo Dutt) appealed in the Appellate Court, and was dismissed by Appellate Court. Lastly, the case went to the Privy Council and it was concluded that any contract or deed with a minor shall be declared as void. The Privy Council observed the combined clarification of Sections 2, 10 and 11 of the Indian Contract Act, 1872 and cleared that all parties involved in a contract should have competency to contract. Minor is considered as incompetent, and an agreement with minor is void from beginning. Therefore, no question of the agreement being void or voidable arises, when it was void at the initial point. The Partnership Act also permits the minor to only enjoy the benefits, and minor cannot be held liable for any obligations thereunder. Parents or custodians of minor are not liable for the agreements done by minor out of any moral responsibility.

ISSUES TO BE DISCUSSED:

1. Discuss the rationale behind considering minor incompetent to enter in a contract.
2. Was the mortgage deed in the case valid?
3. What was the decision of Privy Council in the above case?