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Case comment: Mohori Bibee vs Dharmodas Ghose

Krishan Kumar Garg^a

^aBennett University, Greater Noida, India

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INTRODUCTION

In the area of a minor agreement, the case of Mohori Bibee vs. Dharmodas Ghose¹ is one of the landmark cases. As the case cleared that contract by minor should be void or voidable. A minor cannot enter into a contract and this is mentioned in section 11 of the Indian Contract Act and since we know according to section 10 of the Indian Contract Act that parties entering should be competent to contract i.e., eligible to contract. But there were no provisions which informed about the legal status when the minor is a party to a contract. So, the case clarifies the doubt regarding the legal status when a minor is a part of contracting party of a contract.

FACTS

Dharmodas Ghose, respondent is a minor in the case. He had sole ownership of immovable property, and his mother was allowed as his legal custodian by Calcutta High Court. Brahmoo Dutta, the appellant is a money-lending business in Calcutta and elsewhere and whose attorney was Kedar Nath.

¹ *Mohori Bibee v Dharmodas Ghose* MANU/PR/0033/1903

“On July 20, 1895, a mortgage was executed in favor of Brahma Dutta by Dharmodas Ghose, a mortgage was of the property to which Dharmodas was owner, to secure the repayment of Rs. 20,000 at 12% interest. At the time of the deed, Dharmodas was a minor by law. Brahma Dutta was absent during the whole transaction and was done through his attorney Kedar Nath. On July 15, 1895, Kedar Nath received a letter stating that ‘.....Dharmodas Ghose is still an infant under the age of twenty-one, and anyone lending money to him will do so at his own risk and peril.’² Kedar Nath denied that the fact that he had received the letter but the court held that he had personally received the letter.” On the day when the mortgage was being completed, Kedar Nath had asked Dharmodas Ghose to sign a long declaration stating that on July 17 he had attained majority and on his assurance money is being lent.

Dharmodas Ghose’s mother commenced an action against Brahma Dutta On 10 September 1895, stating that on the day of completion of mortgage Dharmodas Ghose was an infant and the whole transaction must be considered to be void. The court of the first instance looked at facts and granted the asked relief. The appellate court rejected the appeal, and in a short time Brahma Dutta died and the legal executioners of Bhramo Dutta filed an appeal in Privy Council.

ISSUES

Whether the said deed under Section 11[6], 2, 10[5] of the Indian Contract Act, 1872, was void or not?

Whether the Dharmodas Ghose was liable to return the amount of loan which he had received by the appellant under such deed or not?

Whether the mortgage commenced by the Dharmodas Ghose was voidable or not?

JUDGMENT BY PRIVY COUNCIL

When appellant’s counsel argued that section 115 of Indian Evidence Act, 1872, will be applied which states “Estoppel. When one person has by his declaration act or omission intentionally

² *Ibid* para 1

caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.”³ But the court denied by declaring that both parties were aware of the truth and it would not be possible to use Section 115 of the Indian Evidence Act, so, there is no point in using 115 Section of the Indian Evidence Act.

“Their lordship in order to pronounce judgment they referred to section 7 of Transfer of Property Act, 1882, which defines which persons are competent to transfer, and Section 4 of Transfer of Property Act, 1882, provides that ‘the chapters and sections of that Act which relate to contracts are to be taken as part of the Indian Contract Act, 1872’⁴. So, their lordship looked at Section 2 [e], [g], [h], [i], Section 10, Section 11 of Indian Contract Act. Section 2 [e] defines what is meant by agreement, Section 2 [g] defines what agreements are void, Section 2 [h] defines contract, Section 2 [i] defines what are voidable contract. Section 10 defines what are contracts enforceable by law.” Section 11 defines what is meant by ‘persons competent to contract’, and it states that “Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.”⁵ After having a look at these specific sections their lordship declared that the all contracting parties should be “competent to contract” and informs that a person who is an infant is incompetent to contract and cannot make a contract. So, in the present case, their lordship declared that the contract was void.

Referring to Section 68 of the Indian Contract Act states that if an infant or any person who is incompetent to enter into a contract and a party is supplying necessities to the person incompetent, then that party providing necessities can claim to be refurbished, their lordship declared that in the present case this Section 68 does not apply. On raising a new point by appellants’ counsel that section 65 of Contract Act states ‘obligation of a person who had received advantages under the void agreement, or the contract becomes void.’ “Their lordship

³ Indian Evidence Act 1872

⁴ Indian Evidence Act 1872, s 4

⁵ Indian Contract Act 1872, s 11

stated that as Section 65 similar to 64 starts with a 'contract' which means that both parties must be competent to contract so section 65 holds no grounds to be applicable. In their Lordships' opinion, the Act⁶ is exhaustive and imperative and it does provide in simple language that a minor or infant is a person who is not competent to enter into a contract i.e., he is not competent to bind himself to a contract."

Principle

The agreement with infant or minor is not voidable or valid but void *ab-initio* (which means that agreement is void from the beginning only)

Section 64, 65 of the Indian Contract Act applies to the cases where a contract came into force and not to cases where agreement is void *ab-initio*.

MAJORITY ACT, 1875

The Majority Act of 1875 was passed on 2nd March 1875.⁷ The Act was introduced in order to specify the age for attaining the majority. Before the passing of the Act, there was no specific age mentioned for someone to be held as major or minor or infant. This Act fixes the age for attaining a majority in India and i.e., 18 years. It also states that a person will attain majority only when he is the domicile of India and is 18 years of age. "In cases where the legal guardian of a minor is appointed by the court for the minor or for the property of minor or both, then the age of majority will be 21 years not 18 years." On appellant counsel asking for equity, the court referred to the judgment by Romer L.J. "The short answer is that a Court of Equity cannot say that it is equitable to compel a person to pay any money in respect of a transaction which as against that person the Legislature has declared to be void."⁸ After this long discussion and arguments, their lordship had declared that the contract with a minor i.e., Dharmodas Ghose is void *ab-initio* and as it is void *ab-initio* there are no grounds for a claim of the loss amount by appellant i.e., legal executioners of Bhramo Dutta

⁶ Indian Contract Act 1872

⁷ Majority Act 1875

⁸ *Mohori Bibee* (n 1) para 20

ANALYSIS

The Privy Council in this case had strictly laid down a rule that all the agreements with minors would be null and void from beginning in the eyes of law, i.e., void ab-initio. This rule is being followed in India since then. Indian Majority Act defines who is major i.e., all persons who are above and are domicile of India.

According to my understanding, this is one of the best rules laid down by courts that any agreement by a minor should be void ab-initio. This opinion that a minor or infant cannot give free consent to an agreement is correct as they could not give their free consent as an ordinary man would do and also according to law the minor is not capable to understand the nature of an agreement, and which is right as well. The agreements with minor must be stopped as they sometimes create a wrong image in society and is also harmful to society, and any person who comes into an agreement with minor must be punished with imprisonment or must be fined or both, so that agreement with a minor be stopped except to agreement where minor is getting the necessities for another party reason being that when a minor is a party to an agreement, major can dominate or influence the consent of minor and that led to the violation of an important condition of a contract i.e., free consent.

CONCLUSION

In the landmark case of *Mohiri Bibee vs. Dharmodas Ghose*, the agreement with minor is considered to be void ab-initio in eyes of law in India, which is very helpful for the betterment of society as the use of this rule has been limited to cases where a minor i.e., below 18 years age is charged with obligations to other contracting party and the other contracting party seeks to enforce those obligations against a minor.