



Status of Agreements with Minors in India

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Status of Agreements with Minors in India Abstract The Indian Contract Act considers minors as incompetent to contract or lacking contractual capacity. The principle which evolved in the landmark case of MohiriBibee v. DharmocasGhoshwas that the agreements with minors are absolutely void. This principle is slowly becoming confined to the cases of executory agreements or the agreements which are trying to charge minors with obligations.

ABSTRACT

The Indian Contract Act considers minors as incompetent to contract or lacking contractual capacity. The principle which evolved in the landmark case of MohiriBibee v. Dharmocas Ghoshwas that the agreements with minors are absolutely void. This principle is slowly becoming confined to the cases of executory agreements or the agreements which are trying to charge minors with obligations. The effects of agreements with minors have to be worked separately from a contract. The Indian law makes separate provisions for supply of necessities to minors which has its genesis under quasi contracts as well as provisions for restitution also find place and restitution of money is allowed. The Article intends to analyze the position of agreements with minors in India, effects of minors agreements including, ratification, restitution and necessities as well as application of MohriBibee's ruling in present scenario.

KEYWORDS

Minors, Restitution, Ratification, Necessaries.

INTRODUCTION

There is a complicated mass of law when it comes to determining the status of Agreements with minors. An agreement, to become a contract, needs to satisfy the conditions of enforceability by law which are laid down under The Indian Contract Act, 1872¹ (ICA, 1872). One of those conditions is that parties must be competent to contract. It is this requirement of competency which puts a question mark on the validity of agreements with minors. Section 11² of the Act lays down the categories of parties which are competent and one of them is 'a person who is a major' i.e. a

minor is considered incompetent to Contract. A minor is a person who has not attained the age of majority (i.e. 18 years) as per the 'Indian Majority Act,1875'. The legislature has considered minors as incompetent to contract for their own protection as minors are considered not to possess enough maturity or volition to take decisions. Whereas on one hand minors are not considered as competent for the purposes of entering into a contract on the other hand they do take an active part in the social or economic lives and engage in various activities like buying of goods, providing services etc. The important question is then, what is the status of an agreement with a minor?

Position in England

In England as per common law, agreements with minors are voidable and can be categorized in two categories- positively voidable e.g contracts giving an interest in a property of a permanent nature like a lease (valid till the time repudiated at the option of the minor either at the time of minority or within a reasonable time of attaining majority) and negatively voidable (not valid till the time affirmed).The agreements of necessities have always been considered to be valid and binding. The common law was modified by the 'Infants Relief Act,1874' (IRA.1874) which declared three categories of contracts including that of a loan as absolutely void. The Act of 1874 was repealed in 1987 by the 'Minors Contract Act'. Hence the position in England is restored to the earlier common law situation as modified by the Act of 1987.The family law Reform Act, 1969 establishes that age of majority to be eighteen years. This Act also changed the use of the term infant to minors.

Position in India

*MohiriBibee v. Dharmodas Ghosh*³- An analysis-In India however since minors are considered as incompetent, the Privy Council in its 1908 decision of *MohiriBibee v. Dharmodas Ghosh* declared that agreement with minors are absolutely void. In this case the mother of the minor informed the defendant moneylender about the fact of minority of her son, despite the information the defendant asked the minor to give an undertaking to the effect that he is a major and lent him Rs.10,000/- in return of a mortgage deed. The minor approached the court u/s 39⁴ of the 'Specific Relief Act',1877 (SRA,1877) for cancellation of the deed. The defendant put up the defense of estoppel⁵ to which it was held that knowledge is a complete defense to Estoppel. Defendant further claimed relief u/s 64⁶ and 65⁷ of the ICA,1872 and also u/s 41⁸ of the SRA,1877. The Privy Council refused relief under all provisions it held that S.64 of the ICA deals with voidable agreements, but an agreement with minor is void, so it was not considered applicable to the minors agreements. S.65 was also considered inapplicable as it was considered to be applicable to those agreements which could have been converted to contracts and not to those which could never have become contracts.

As for applicability of S.41 of the SRA, the Privy Council clearly said that relief is to be granted if requirements of justice say so, however in this case the defendant money lender tried to take advantage of the situation and no considerations of justice were in his favour.

The language of S.65 can easily be interpreted to cover the cases of agreements with minors as well. However no amendment or different view then that of *Mohiri Bibee* have come up till date. The *Mohri Bibee*'s ruling is growingly getting confined to cases where contracts are executory. In case minor has executed his part and he only has to receive benefits, the courts are increasingly allowing minors in such cases to receive them.

Effects of Agreements with minors

The agreements with minors have been considered to be without having any effect. Since there is no contract, no contractual obligation should exist on either side. As a consequence, effect of such agreements need to be worked out independently of any contract.

- I. **Estoppel:** In MohriBibee's case estoppel did not apply as the defendant had the knowledge of the fact. However estoppel in general is not considered to be applicable on minors as there can be no estoppel against a statute. The policy of the contractual law in India is to give protection to minors who do not have capacity to contract; estoppel cannot be used as a tool to defeat the policy.⁹
- II. **Liability in tort:** A minor can be made liable for a tort if the tort is independent of a contract. A minor is not liable under a contract or for a tort which is arising directly from a contract e.g. if a minor borrows horse to ride from point A to point B but rides it to point C and the horse gets injured, the minor shall not be considered as liable as this liability arises directly from a contract, however in the same example if the minor has taken the horse for the purpose of riding himself, uses it in a carriage or lends it to be used by someone else¹⁰, then the liability can be worked independently of a contract.
- III. **Necessaries:** Contracts of necessaries have always been considered to be valid under English law. Infact beneficial contracts of service have been equated to the contracts of necessaries under English law. However courts in England examine each contract from the point of view of the benefits and prejudices to a minor, if the terms of the contract are onerous or not beneficial for a minor they are not considered as necessaries¹¹. In India Contracts of service like any other agreement is considered to be void, even if made for the benefit of the minor, if it is executory, it cannot be enforced¹². As per Indian law, Liability for Necessaries i.e. things suited to one's condition or station in life,arises not out of a contract but is governed by S.68¹³ which finds place in Chapter V of the ICA,1872- dealing with 'Of Certain relations resembling those created by a Contract' i.e. quasi contracts as called under English law. Necessaries travel beyond basic food,clothes and housing. What is necessary is always decided with reference to ones condition in life and the fact that the minor does not have enough supply of the goods which are being claimed as necessaries by the supplier.
- IV. **Ratification:** Ratification always relates back to previous authority. Since a minor is incompetent to contract he cannot ratify the agreements which he entered in to as minors since what he did not possess at the time of entering in to an agreement can't be supplied later on i.e. a void agreement cannot be converted into a valid contract through subsequent ratification. However if in addition to the consideration supplied during minority, some new consideration is given or further loan is given, a promise to pay whole amount is binding as this is really not a case of ratification but a case of fresh contract.
- V. **Restitution:** The important question is that if a minor has obtained some money or property, can he be compelled to restore it? A minor can be asked to restore property if the same is still in his possession under the doctrine of restitution which finds genesis under equity. However if the property is not traceable then the question of restitution does not arise. Another question which arises is that if the property is converted in to money or the minor obtained money under the contract initially, can money be restored? In England in the famous case of Leslie(R) v. Sheill¹⁴ where an infant was able to get some money from the plaintiffs on the basis of fraudulent misrepresentation as to age, it was held that enforcing a money decree is equivalent to enforcing a contract of loan which is void (under IRA,1874). Restitution stops where repayment begins.

For a long time English law conception of restitution was colored by IRA,1874 which declared contracts of loan as void. However this Act has been repealed by the Minors Contract Act,1987. As to the question of restitution, S.3 of the Act states that the court may if it is just and equitable, require the minor to give back, any property acquired by him or any property representing such property. This means that even if the original property is not traceable and minor has converted the property in some

other property then that property can be restored. Whether the property shall include money has not been clarified. A good guidance can be taken in the common law case of *Stock v. Wilson*¹⁵ where minor obtained some goods by fraud, he sold a part of them and held proceeds in cash with him, the court compelled the minor to restore the proceeds and the remaining goods. However if the minor has parted with the money or have lost the property then there will be no question of restitution.

Restitution in India

In India, before discussing the final law relating to the restitution by minors, it is important to refer to the two divergent cases on the point. The first one is *Khan Gul v. Lakha Singh*¹⁶, here minor was a defendant who had concealed his age and had obtained money in return of the promise to sell his land and thereafter he refused to perform his promise. The Plaintiffs asked for the recovery under S.41 of the SRA,1877. There was no question of enforcement of any contractual obligation as the agreements with minors are void. The court while admitting the fact that the language of the provision shows that the jurisdiction of the court can be invoked when the minor is a plaintiff, however in view of doing justice the court applied it to the case of minor defendant and said that the case of *Leslie v. Sheill* should not be made applicable to India as the contracts with minors are voidable in England and not void, hence the scope of application of Equitable doctrine of restitution should be more in India for considerations of justice and equity.

The second case is that of *Ajudhia Prasad v. Chandan Lal*¹⁷ where the Allahabad High court did not follow the above opinion and followed the case of *Leslie v. Sheill* and was of view that any other opinion will be going against the preponderance of authorities both in England and in India and also against the provision which can only be invoked by minor plaintiffs and not minor defendants.

These two cases generated a controversy. Law Commission preferred the view taken in *Khan Gul*'s case and suggested suitable amendments in the Specific Relief Act. The controversy resulting from the divergent views have been put to rest by the Specific relief Act,1963. Section 33 deals with the principle of restitution and sub clause (1) talks about minor plaintiff and is worded in a similar fashion as the section 41 of the old SRA,1877.¹⁸ Sub clause (2) incorporates the provision relating to minor defendant whereby he can be asked to restore the benefits to which he or his estate has been benefitted thereby.

It is clear that benefits include both property and money. Restitution of money is allowed in India but to the extent where it has been used to grant some permanent benefit, this clause has not been invoked where benefit has been transient e.g. minor spends money on having food or watching a movie.

CONCLUSION

In general the principle that agreements with minors are void is followed. However there are various cases where minor has done what he was supposed to do and now he is only to be a recipient of benefits, then should this principle be allowed to come in way? The courts have answered this preposition in negative. The minors are being allowed to enforce those contracts under which he has furnished full consideration and now he is required to bear no obligations. The ruling of *Mohori Bibee* is increasingly being confined to the cases where other parties are trying to enforce contractual obligations on the minors or the contract is totally executory. It would be a strange consequence that the provision which was made for the benefit of a minor will be used against him. In a Madras High Court case where minor had furnished the whole amount of loan against a mortgage deed, he was allowed to enforce the mortgage agreement.¹⁹ In another case the Bombay High Court, did not allow an insurance company to refuse the fire insurance amount on the basis of a void agreement where the minor had furnished the premium which had been accepted by the company²⁰. However all those cases where

minor has not furnished the consideration, even if made for their benefit can't be enforced by them.

The law is a living entity it needs to evolve with the changing circumstances. In today's world of rapid information technology, sticking to the old views and notions might not be workable. In the present world minors are increasingly entering into contracts. Suitable amendments must be brought to the ICA whereby contracts which are only for receipt of benefit by minors, where they have executed their part should be allowed. Restitution provisions in case of minors who obtain property or money through fraudulent misrepresentation should also be made more stringent. There should be a proper balance between the interest of minors and the other parties.

REFERENCES

1. S.10, The Indian Contract Act, 1872. What agreements are contracts. —All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in 1 [India] and not hereby expressly repealed by which any contract is required to be made in writing¹ or in the presence of witnesses, or any law relating to the registration of documents.
2. Id.s.11-Who are competent to contract.—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.
3. (1903)30 Cal 539(PC)
4. S.39- Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury; may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.
5. Section 115, The Indian Evidence Act, 1872 - Estoppel. —When one person has, by his declaration, act or omission, intentionally 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
6. S.64- Consequences of rescission of voidable contract. —When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding avoidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received
7. S.65- Obligation of person who has received advantage under void agreement or contract that becomes void. — 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.

8. S.41- On adjudging the cancellation of an instrument the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.
9. GadigeppaBhimappaMeti v. BalangowdaBhimangowda- AIR 1931 Bom 561.
10. Burnard v. Haggis,(1863)4 CBNS 45.
11. Roberts v. Grey-1913 1kB 520,De Francesco v. Barnum-(1890) 45 CH D 430.
12. Raj Rani v. PremAdib-(1949)51 BOMLR 256
13. S.68. Claim for necessaries supplied to person incapable of contracting, or on his account. —
If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
14. (1914)3 KB 607(CA)
15. (1913)2 KB 235
16. ILR(1928)9(Lah)701
17. AIR 1937All 610
18. *Supra* note 9
19. A.t RaghavaChariar v.O.MSrinivasa-ILR(1916)40 Mad 308
20. Great American Insurance Co. ltd.v.Madanlal.
