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International Journal of Legal Enforcement is an online peer review journal dedicated to express views on legal and socio legal aspects. This platform also shall ignite the initiative of the young students. We do not charge any publication charge for online publications. We process to bring out the analysis and thoughts of every socio legal and legal matters from the young powerful minds. With this thought we hereby present you, International Journal of Legal Enforcement.

**“Dharma is to protect the Needy”**

**Case Comment on**

**Mohori Bibee V/S Dharmadas Ghose**

**Sarvesh Kasaudhan,**

**Student, Lloyd Law College**

**Citation:** (1903) ILR 30 Cal 539 (PC)

**Court:** Privy Council of India

**Date of Judgement:** 04 March 1903

**Appellants:** Mohori Bibee and Another

**Respondent:** Dharmodas Ghosh

**Hon'ble Bench:** Lord McNaughton, Lord Davey, Lord Lindley, Sir Ford

North, Sir Andrew Scoble, Sir Andrew Wilson

### **Introduction:**

The case Mohori Bibee V/s Dharmodas Ghosh primarily conveys the issue of the minor's agreement. In India, according to Section 11 of the Indian Contract Act, 1872 an agreement with a minor is void ab-initio and as per the law, any person below the age of 18 is not allowed to come in contract. Any law considered concerning contract is contained in the Indian Contract Act, 1872 which is based on the English Common Law. This case is also very important to justify the essential circumstances for making any agreement enforceable by law i.e. completing it into a contract. In day-to-day life, maximum persons are somehow bounded with the contracts sometimes knowingly or sometimes not, so it is very important to aware maximum persons one of the common essential form a contract which is 'being major'. Section 11 of this act states that any person below the age of 18 can't be considered to be matured enough that he/she can take such a legitimate decision. In the verdict of this landmark case, the Privy Council stated the fact that any kind of agreement with a minor will be considered as 'void'<sup>1</sup>.

### **The fact of the case:**

In this case, the respondent Dharmodas Ghose was a minor (less than 18 years old) and sole owner of immovable property. Since he was a minor, the Calcutta High Court authorized his

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<sup>1</sup> Pragyna Panigrahi, Case Summary: Mohori Bibee vs Dharmodas Ghose | LawLex.Org LawLex.Org (2021), <https://lawlex.org/lex-bulletin/case-summary-mohori-bibee-vs-dharmodas-ghose/23391> (last visited Jun 5, 2021).

mother as his legal guardian. Dharmodas Ghosh borrowed Rs. 20,000 at the interest of 12% from Kedar Nath who was the attorney/agent of Brahmo Dutt who was a money lender and for the same he mortgaged his immovable property to the Kedar Nath. The loan was approved by Kedar Nath and he even paid the first installment for it of Rs. 10,500 but when his mother got aware of this fact, she wrote a letter to Kedar Nath asking him for terminating this loan contract as Dharmodas Ghosh was a minor at the date when such a mortgage deed was commenced. The defendant's representative or we can say the representative of the money lender gave the money to the plaintiff after being acknowledged the issue of his incompetency towards the contract as well as incompetency towards the ownership of the property<sup>2</sup>.

Now Brahmo Dutt wanted a restoration of the benefits, basically returning the benefits that the minor (Dharmodas Ghosh) has taken in the form of a loan of Rs. 10,500. Dharmodas Ghosh along with his mother filed a legal suit against the Brahmo Dutt on the prayer that 'Dharmodas Ghosh was minor at the time of commencement of the contract, so the contract must be revoked'. Such a contract doesn't fulfill the essentials to hold it legally bounded i.e. enforceable by law which can be declared as contract. During the court proceeding, Brahmo Dutt died, and then his wife Mohori Bibee represented him and proceeded with the appeal<sup>3</sup>

#### **Issue Raised:**

- Whether the deed was void under section 10 and 11 of the Indian Contract Act, 1872?
- Whether the defendant was liable to return the amount of loan which he had received under the deed?
- Whether the mortgage commenced by the defendant was avoidable?<sup>4</sup>

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<sup>2</sup> Mohori Bibee & anr. Vs. Dharmodas Ghose - Law Times Journal, Law Times Journal (2021), <https://lawtimesjournal.in/mohori-bibee-anr-vs-dharmodas-ghose/> (last visited Jun 5, 2021).

<sup>3</sup> Case Analysis-Mohori Bibee v/s dharmodas Ghose, Legalserviceindia.com (2021), <http://www.legalserviceindia.com/legal/article-232-case-analysis-mohori-bibee-v-s-dharmodas-ghose.html> (last visited Jun 5, 2021).

<sup>4</sup> Case study on Mohori Bibee v. Dharmodas Ghose | Law column, Law column (2021), <https://www.lawcolumn.in/case-study-on-mohori-bibee-v-dharmodas-ghose/> (last visited Jun 5, 2021).

### **Appellant's Argument:**

- The respondent was a major at the time of the deed executed.
- The Appellant as well as his agent was unaware of the fact that the respondent was minor.
- Respondent made a false representation of his age when the deed was executed.
- Respondent must repay the benefited amount as per Section 64 and Section 38 of the Indian Contract Act, 1872.
- As per Section 115 of the Indian Evidence Act, 1872 Dharmodas Ghosh can't claim that he was a minor at the time of commencing this deed<sup>5</sup>.

### **Respondent's Argument:**

- Brahmo Dutt and his attorney Kedar Nath were well aware of the fact that Dharmodas Ghosh was a minor at the time of commencement of deed.
- Since the respondent was minor at the time of commencement of deed, the contract must be void.<sup>6</sup>

### **Judgment:**

The Hon'ble Court examined the point of issuing the money to Dharmodas Ghosh as being acknowledged that he was minor. It can be considered that the appellant was not present at the time of deed commenced but this fact also can't be ignored that his agents were authorized to commence any deed on his behalf. Since the deed was commenced in good faith and the relation of principal-agent can't be ignored here so the court held that the agents were legally imputed to the appellant.

Regarding the issue of applicability of the Indian Evidence Act, so court examined that both the parties were aware of the truth as the appellant's agent gave his statement regarding it. Due to the present circumstances Section 115 of the Indian Evidence Act, 1872 can't be applicable in this case. To justify the verdict given in this situation court referred the case of Nelson Vs. Stocker (199 App. Div. 955). In the same manner Section 64 of the Indian Contract Act, 1872

<sup>5</sup> Mohori Bibee and Another v Dharmodas Ghose on 04 March 1903 - Judgement - LawyerServices, Lawyserservices.in (2021), <https://www.lawyerservices.in/Mohori-Bibee-and-Another-Versus-Dharmodas-Ghose-1903-03-04> (last visited Jun 5, 2021).

<sup>6</sup> (2021), <https://www.latestlaws.com/case-analysis/contract-by-minors-landmark-case-analysis-mohori-bibee-v-dharmodas-ghosh-by-nihal-chhetri/> (last visited Jun 5, 2021).

is only applicable in the case where the persons are competent to contract nor any person who is incompetent to contract as a minority was the point in this case.

The trial court gave the judgment that the minor has no eligibility to enter into a contract under Section 11 of the Indian Contract Act, 1872 that clearly says "every person is competent to contract who is of the age of majority according to the law to which he/she is subjected to. Hence any contract with minor is void ab initio". Hence the mortgage deed that was commenced between appellant and respondent was void and the respondent was not complied to give back any kind of money. After such a verdict, the appellant Brahmo Dutt was not satisfied and he appeared in the Calcutta High Court but there also the court stand upon the verdict that the trial court gave and dismissed the appeal. Then the appellant Brahmo Dutt appealed to the Privy Council that also held the same verdict as the lower court. The other important aspect of the judgment held that the minor could not be forced to return the money which was advanced to him as he was not legally bound by such a promise.<sup>7</sup>

#### **Critical Analysis:**

In the case of Mohori Bibee V/s Dharmadas Ghosh, the Privy Council gave the decision that no minor can enter into a contract, and in any mortgage deed if a minor is a party it will be considered as void. According to the Majority Act, 1875 any person who is below the age of 18 years shall not be competent to enter into any agreement or contract. As per my perspective, the judgment wholly satisfies because any minor must not be considered as eligible to commence any contract and if the party comes in the contract with the minor then the minor must not be forced to return the beneficiary amount. Minor comes under the category that can't be considered as matured one, their presence of mind must not be emphasized much evolved or they can't give free consent as like ordinary people and contract without free consent is void. Hence contract with a minor must be void and in case if any person knowing the fact that the other party is a minor commence any deed with the minor then he/she must be punished according to the law<sup>8</sup>.

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<sup>7</sup> Mohori Bibee Case and the Tryst of Minors with the Contract Law, Lexlife India (2021), <https://lexlife.in/2020/10/15/mohori-bibee-case-and-the-tryst-of-minors-with-the-contract-law/> (last visited Jun 5, 2021).

<sup>8</sup> Case Analysis-Mohori Bibee v/s dharmadas Ghose, Legalserviceindia.com (2021), <http://www.legalserviceindia.com/legal/article-232-case-analysis-mohori-bibee-v-s-dharmadas-ghose.html> (last visited Jun 5, 2021).

**Conclusion:**

In the case of Mohori Bibee V/s Dharmadas Ghosh it can be concluded that any deed or agreement commenced by a minor will be declared as null and void as any such agreement with a minor will be considered as void ab initio in the eyes of law. Another aspect is that if any minor has commenced any deed or contract then for the same the legal guardian of the minor will not be liable regarding the same as their consent was not relied on with the act and later on minor must not be forced to return any kind of beneficiary that he/she possessed during the deed.

