

# MOHORI BIBEE & ANOTHER VS DHARMODAS GHOSE - A CRITICAL ANALYSIS

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## Abstract

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The Indian Contract Act, 1872 along with other statutes form the base on which the entire ensemble of the commercial laws in India relies on. Thus, clear and correct interpretation of the provisions of this Act is not only important but also pre-emptive in certain ways. Privy Council's judgment on Mohori Bibee v Dharmodas Ghose is considered a landmark judgment in the area of contract laws. Prior to this judgment, the character of contract with a minor had remained a very shady and confusing topic. The importance of this judgment lies in the fact that it cleared the air eliminating the uncertainty and confusion and established very clear statements regarding how a contract with a minor should be treated. In this paper, we have tried to analyze this judgment and explain why the judgment is a very important precedent for the interpretation of the contract laws, which holds significance even today.

## Keywords

Minor, Contract, Guardian, Appeal, Void *ab – initio*, Voidable, Principle of Estoppel, Privy Council

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**Facts of the Case**

1. Babu Dharmodas Ghose (Hereinafter referred as “Dharmodas”) was a resident of Howrah and he owned some properties, both movable and immovable. His mother, Jogendranandini Dasi was appointed his guardian by the Calcutta High Court.<sup>1</sup>
2. For requirement of money, Dharmodas mortgaged some of his houses to a money lender Brahmo Dutt whose attorney was Kedar Nath Mitter (Hereinafter referred as “Mitter”). A Mortgage Deed of Rs 20,000 with interest @12% per annum was executed by Dharmodas on 20th of July 1895 in favour of Brahmo Dutt to Mitter. At the time of execution, Brahmo Dutt was outside Calcutta and Dharmodas was a minor.
3. Dharmodas received advance payment of Rs 8,000 out of that Rs 20,000 immediately after the execution of the mortgage deed, although the actual amount received is in dispute.
4. After the execution of the said deed was completed, Jogendranandini Dasi, served a legal notice to Mitter, through her own attorney Bhupendra Nath Bose, informing that her son, Dharmodas Ghose was a minor, even on the day when the mortgage deed was executed and that he was not legally eligible to be part of contracts yet.
5. After getting that legal notice, Mitter and Babu Dedraj, who was the manager of Brahmo Dutt, obtained Dharmodas’s declaration which stated –
  - a. Dharmodas had already taken Rs 8,000 when he was a minor and the remaining Rs 12,000 would be obtained by him after attaining majority and,
  - b. After attaining majority he would repay the entire loan amount along with interest in the prescribed rate.
6. On 10<sup>th</sup> September, 1895, Jogendranandini Dasi filed a suit through her son’s next friend against Brahmo Dutt at the Trial Court claiming that Dharmodas was a minor on the date of execution of the mortgage deed and thus was legally incompetent to enter into any contract, and prayed that the same be declared void.
7. Brahmo Dutt, contested the case and in his defence argued that he was not present in Calcutta at the time of the execution of the deed and that Dharmodas had attained majority at the time of execution of the deed and that both Babu Dedraj and Kedar Nath Mitter were totally unaware of the fact that Dharmodas was a minor.
8. In the trial, the Plaintiff argued and prayed to declare the contract between them as *void ab-initio*, since from the beginning of the contract, Dharmodas was a minor. On the contrary, the Respondent argued that the contract was not void but voidable due to fraudulent presentation of age and that the plaintiff must not be allowed any kind of relief without repayment of the

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<sup>1</sup> (1989) ILR 26 Cal 381.

advanced loan. He also prayed that the „*Principle of Estoppel*“ under **Section 115 of the Indian Evidence Act, 1872** was applied in this case since the plaintiff had hidden many facts from the respondents from the very beginning of the contract. The Trial Court ruled in favour of the Plaintiff and declared the contract between them, *void ab – initio*.

9. The case was further appealed at the Calcutta High Court where the Hon’ble Court maintained the Trial Court’s judgment, and subsequently a final appeal was made to the Privy Council by Mohori Bibee, wife of Brahma Dutt since the latter died during this period.
10. In their verdict, the Privy Council<sup>2</sup> maintained the Hon’ble Appellate Court’s judgment and ruled that any contract signed with a minor shall be considered *void ab – initio* i.e. void from the beginning and would not be considered voidable for any reason. The Council further ruled that the “*Principal of Estoppel*” under Section 115 of the Indian Evidence Act, 1872 would not be applicable to minors even if the minor has had misrepresented himself as a major during the execution of the contract.

### **Issues of the Case**

The issues of the case are as follows:

- a. In case of a contract entered into by a minor, should it be deemed void ab-initio?

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<sup>2</sup> 7 CWN 441; 30 M.L.A 114.

- b. In case of a contract entered into by a minor by fraudulently misstating his age should it be considered as voidable owing to the fraud?
- c. Whether the plaintiff was liable to repay the advanced loan amount to the respondent?
- d. Whether Section 115 of the Indian Evidence Act, 1872 would be applicable in case of minors.

### **Synopsis of the Judgment**

After hearing the arguments from both sides, the Privy Council ruled that, **Section 115 of the Indian Evidence Act, 1872**<sup>3</sup> was not applicable in this particular case since the mortgagor was well aware of the actual facts and was not misled by the false statements made by the minor<sup>4</sup>. The Council further stated that there could be no estoppels where both the parties are aware of the true facts.

The council continued, stating that false statements made to someone who knows it to be false does not constitute as fraud and thus, would not render the contract voidable. The fraud does not take away the privilege of infancy. The same principle has been explained in **Section 19 of the Indian Contract Act, 1872**.<sup>5</sup>

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<sup>3</sup> See Section 115 of Indian Evidence Act, 1872 (Act No. 1 of 1872).

<sup>4</sup> See Section 3(1) of The Majority Act, 1875 (Act No. 9 of 1875).

<sup>5</sup> See Section 19 of the Indian Contract Act, 1872 (Act No. 9 of 1872).

The appellants further argued on **Section 64 of the Indian Contract Act, 1872**<sup>6</sup> while claiming repayment of the already advanced loan to the respondent, but both the Courts<sup>7</sup> stated that this section was applicable only for persons competent to contract and thus was not applicable here in case of a minor. The appellants also stressed on **Sections 38**<sup>8</sup> and **Section 41**<sup>9</sup> of the **Specific Relief Act, 1963** where the sections bestowed discretion upon the Courts, but both the previous Courts<sup>10</sup> concluded that the circumstances in this particular case did not allow them to order the repayment since both the parties were aware of the infancy. The Privy Council maintained the same judgment.

In the context of these arguments, to establish whether the contract entered into by the minor was *void ab-initio* or *voidable*, the Lordships analyzed **Section 7 of the Transfer of Property Act, 1882**<sup>11</sup> and **Section 2(e)**<sup>12</sup>, **Section 2(g)**<sup>13</sup>, **Section 2(h)**<sup>14</sup>, **Section 10**<sup>15</sup> and **Section 11**<sup>16</sup> of the **Indian Contract Act, 1872** and concluded that the Acts make it

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6 See Section 64 of the Indian Contract Act, 1872 (Act No. 9 of 1872).

7 The Court of First Instance and The Calcutta High Court.

8 See Section 38 of the Specific Relief Act, 1963 (Act No. 47 of 1963).

9 See Section 41 of the Specific Relief Act, 1963 (Act No. 47 of 1963).

10 Supra, Note 9.

11 See Section 7 of the Transfer of Property Act, 1882 (Act No. 4 of 1882).

12 See Section 2 (e) of the Indian Contract Act, 1872 (Act No. 9 of 1872).

13 See Section 2 (g) of the Indian Contract Act, 1872 (Act No. 9 of 1872).

14 See Section 2 (h) of the Indian Contract Act, 1872 (Act No. 9 of 1872).

15 See Section 10 of the Indian Contract Act, 1872 (Act No. 9 of 1872).

16 See Section 11 of the Indian Contract Act, 1872 (Act No. 9 of 1872).

mandatory that the contracting parties are „*competent parties*“ and that definitely do not involve minors.

Finally, the Lordships further referred to observations of Lord Justice Romer in **Thurstan v Nottingham Permanent Benefit Building Society**<sup>17</sup>,

“The short answer is that the 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 the person the legislature has declared to be void.”

Thus the Council ruled that a contract entered into by a minor is *void ab-initio*.

### **Critical Analysis**

Even after the enactment of the **Indian Contract Act, 1872**, the nature of the contact with a minor had always remained a controversial topic. In the case of *Mohori Bibee v Dharmodas Ghose*, the Privy Council meticulously analysed the relevant sections of the **Indian Contract Act, 1872** and other relevant legislatures and established statements in very clear terms in the judgment. Any kind of ambiguity and uncertainty pertaining to the interpretation of the judgment has been clearly avoided by the Lordships. The judgment makes it clear that any contract made with a minor, whether expressed or implied would be considered null and void, since a minor is not competent to be considered as a contracting party. Such an

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17 (1902) (sic) Ch. 1: 71 L.J. Ch. 83: 50 W.R. 179: 86 L.T.35: 18 T.L.R. 135.

agreement would be no agreement in the eyes of law. The judgment also establishes the fact that if a minor enters into a contract by fraudulently representing his age, the contract would not be deemed voidable owing to the fraud since the privilege of innocence would overrule the fraud aspect. According to us, the judgment prevents the possibility of any harmful social, economic and legal effects on the lives and conditions of the minors arising out of any contractual liability. At the end, the judgment also indirectly explains the importance of a guardian's consent in a minor's life as far as contractual liabilities are concerned. It was explained that in case of a contract with a minor where the loan had already been advanced to the minor, the guardian of the minor would not be under any legal or moral obligation to repay the loan unless the prior consent of such guardian had been obtained before execution of the said agreement with the minor, hereby rendering the prior consent of the guardian as mandatory.