

CHAPTER XI

MINOR'S AGREEMENTS

I INTRODUCTION

A MINOR is a person who has not attained the age of majority according to the law to which he is subject. This age has been fixed differently by different legal systems at different times, and different ages may be fixed for different purposes by the same legal system at the same time. The age of majority for purposes of contracts is determined by the Indian Majority Act, 1875. According to section 3 of the Act, a person is deemed to have attained majority, when he completes 18 years; but a minor, under the superintendence of a Court of Wards, or of whose person or property a guardian has been appointed by the court, becomes major on the completion of his 21st year. The capacity of a person with regard to marriage, dower, divorce, adoption, religion and religious rites is not governed by the provisions of this Act.

The law tries to reconcile two conflicting positions—a minor due to his immaturity arising out of his age has to be protected against enforcing unconscionable contracts which he may be led to enter, but a minor like an adult has to have his existence in the world and, therefore, some protection has to be extended even to minor's agreements.

II MINOR'S AGREEMENTS VOID

Section 11 of the Indian Contract Act, 1872 provides:

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.

In other words, according to the section a minor is not competent to contract. In the beginning there was some confusion, probably attributable to the English law on the subject, whether such contracts were void or voidable. In England, before the Infants Relief Act, 1874, the position at common law was that infant's contracts were voidable (that is, the infant could enforce them against the third party, though the latter could not against the infant) at his option, either before or after the attainment of his majority. The position has been considerably changed by this Act and minor's contracts are now generally void with a few exceptions. It is not necessary to refer to the niceties of the English law except wherever it is necessary for the development of our own law.¹ The Privy Council in its judgment in *Mohori Bibee v. Dhurmodas Ghose*² held that the minor's contracts were void *ab initio*. In this case a minor executed a mortgage in favour of a money-lender as a security against repayment of a loan of Rs. 20,000 at 12% advanced to him. Later on, an action was taken against the money-lender on behalf of the minor for declaration that the mortgage was void and inoperative. The Privy Council upheld the contention of the minor. Whether the minor could be compelled to restore the benefit received under a void contract is considered shortly.

A minor's agreement being void cannot be ratified on attaining majority. Thus, a promissory note executed by a minor and ratified on attaining majority in consideration of debts received during minority is bad for want of consideration and will not be enforceable.³

III CONTRACTS FOR NECESSARIES

At common law, minor's contracts for necessities supplied to the minor were binding on him. Necessaries, in a nutshell, are those without which an individual cannot reasonably exist. As Pollock and Mulla state:

Necessaries must be things which the minor actually needs; therefore it is not enough that they be of a kind which a person of his condition may reasonably want for ordinary use, they will not be necessary if he is already sufficiently supplied with things of that kind, and it is immaterial whether the other party knows this or not.⁴

Section 68 of the Indian Contract Act specially exempts minor's contracts for necessities from the vice of nullity. It provides :

1. For details, see Anson, *Law of Contract* 184 (1969); Cheshire and Fifoot, *Law of Contract* 347 (1964).
2. 30 I.A. 114 (1903).
3. *Narendra Lal v. Hrishikesh Mukerjee*, A.I.R. 1919 Cal. 875.
4. *Indian Contract and Specific Relief Acts* 116 (1972).

If a person incapable of entering into a contract, or any one of 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.

The section does not create any personal liability of the minor for supply of necessaries but only his estate is liable. Further, the person supplying necessaries is entitled only to reimbursement, that is, a reasonable price and not the contracted price.

IV CONTRACTS BENEFICIAL TO MINORS

At common law contracts for the benefit of minors are valid and the Infants Relief Act does not change this legal position. Instances of such contracts are "where an infant enters into a contract of service so as to provide himself with the means of self-support, or one for the purpose of obtaining instruction or education to fit himself to earn his living at a suitable trade or profession."⁵ Other contracts falling within this category will include such contracts, .e.g.:

For medical attendance, for the preparation of a marriage settlement by a solicitor, or the hire of a car to fetch an infant's luggage from the station. Provided that these are reasonable and beneficial to him. Yet the class does not include ordinary trading contracts, as, for instance, the hire-purchase of a motor lorry by haulage contractor. Such contracts may be necessary to the infant's business, and so of benefit to him, but they are not binding on him.⁶

For determining whether a contract is beneficial to him or not, the contract as a whole will have to be considered. If the contract as a whole is beneficial, the fact that a certain stipulation is onerous to the infant will be immaterial.

In India, however, the position is different. In *Raja Rani v. Prem Adib*,⁷ the leading case on the subject, the father of a minor girl, Raja Rani, entered into a contract of service on behalf of his daughter with Prem Adib, a film producer. According to the terms of the contract, Raja Rani was to act as a film actress in the defendant's studio for a period of one year, for a sum of Rs. 9,500 to be payable in 12 equal instalments. The contract was specifically "for and on behalf" of Raja Rani. When she was carrying on her part of contract, Prem Adib terminated the contract. Raja Rani sued through her next friend for damages. The Bombay High Court held that the contract of service entered

5. Anson, *supra* note 1 at 196.

6. *Id.* at 198.

7. A.I.R. 1949 Bom. 215.

into by a father on behalf of the minor was not enforceable and was void for want of a valid consideration. It refused to import the British concept of "beneficial contracts". According to the judgment, a contract of service beneficial to the minor even coming within the category of necessities was void. This is not a happy situation. To some extent the harshness of the law has been mitigated by the Apprentices Act, 1961. Under this Act an employer is obligated to pay to every apprentice (that is, a person undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship) during the period of apprenticeship training such stipend at a rate as may be specified in the contract of apprenticeship and the stipend shall be paid at such intervals and subject to such conditions as may be prescribed. Further, under section 30 of the Partnership Act a minor partner can be admitted to the benefits of partnership. He is entitled to share the profits of the firm. His share is liable for the acts of the firm, but he is not personally liable for any such act.

It is suggested that section 11 of the Contract Act should contain a provision excluding from the purview of the section contracts of service of minors if in the opinion of the court they are beneficial to the minor.

V EXECUTED CONTRACTS

The minor's contracts being void cannot be enforced against the minor or by the minor against the third parties. This is the correct proposition of law as far as executory contracts are concerned. But this is not entirely true in the case of executed contracts. The law in this direction has developed to protect minors and make their living possible. If it were otherwise, "A boy in the street cannot sell his oranges, and a child cannot spend his pocket money."⁸ Thus, it has been held that a mortgage executed in favour of a minor by a person as a security for loan advanced to him is not void but valid.⁹ A minor can be a promisee though not a promisor. Once he has performed his part of the contract, and thus discharged his obligations, what remains to be done under the contract is for his benefit and it would be unreasonable not to enforce such a contract. As Srinivasa Aiyangar J. pointed out in *Raghava v. Srinivasa*:^{9a}

These provisions after all were enacted for the benefit of incapacitated persons and need not be interpreted so as to enable an adult party to defeat or impair the obligation of his contract by his own act or to profit by his own fraud....

8. *Raghava v. Srinivasa*, A.I.R. 1917 Mad. 630 at 640.

9. *Ibid.*; *Madhab Koery v. Baikuntha*, A.I.R. 1919 Pat. 561.

9a. *Id.* at 641.

On the same basis once the consideration for sale of immovable property has been paid and the transfer executed in his favour it will be a valid transfer. A minor in such a case can sue for the possession of the property conveyed.¹⁰ Similarly, where a sale has been executed in favour of the minor and the minor has paid some consideration, he can recover possession of the purchased property upon tender of the balance of purchase money.¹¹ In this case it is true that the minor has still to perform his part of the contract, but by execution of the sale deed the title to the property passes to him. A suit for possession would lie in such a case, and on equitable grounds the court would give this relief on payment of the balance by the minor, particularly where the contract was entered into between the parties through the guardian of the minor. Similarly, a promissory note in favour of a minor in consideration of cost paid by the minor will be valid.¹²

However, if a contract imposes a continuing liability upon a minor, it would be void though a part of the consideration has been paid, as it imposes an obligation upon a minor. Thus, a lease executed in favour of a minor imposing upon him a liability to pay rent and perform certain covenants will be null and void.¹³

In all the above cases where the courts upheld the right of specific performance, it was done at the instance of the minor for enforcing a mortgage or possession of property under a sale where the necessary deed had been duly executed in favour of the minor. Will the situation be the same where there is a purchase by the minor of movable or immovable property and the minor has paid the price but the seller has not delivered the property to him or executed the sale deed (in the case of immovable property)? Can he sue only for restitution of the money, or for breach of contract or specific performance (as the situation demands)? Or suppose the purchase has been effected, the minor paying the price and the seller delivering the goods. What will be the position then? Can he later on avoid the transaction and ask for the money back? The answers are not easy. On the one hand, the purchase may be to his advantage and in that case merely restitution of price may not sufficiently protect his interest. On the other, if such a contract is to be enforced, the idea of the law to protect a minor against his lack of experience and from squandering ready money for trash or useless luxuries gets frustrated.

10. *The Baikuntha case, ibid; Munni Koer v. Madan Gopal*, 31 I. C. 792 (1915).

11. *Narain Das v. Dhanaia*, 35 I.C. 23 (1916).

12. *Rangarazu v. Basappa*, 24 M.L.J. 363 (1913).

13. *Pramila Bali Das v. Jogeshwar Mandal*, 46 I.C. 670 (1918).

On a rational plane, as the minor's contracts are void, the minor cannot be allowed to sue for damages or for delivery of the property where the seller has not fulfilled his part of the contract, though the contract is an executed contract in the sense that the minor has paid the price, though he can claim restitution of the money paid.¹⁴ This is so even though the purchase is for the benefit of the minor. Here the situation is different from the mortgage in favour of the minor which is security for the loan advanced by the minor and the question of passing of property in the mortgage arises only on the debtor's failure to pay back the loan; further in the case of duly executed conveyance of immovable property in the minor's favour, the title has passed to him under the Transfer of Property Act, and it follows that possession can be granted to him.

As for the situation where the property has been delivered to the minor, reference may be made to the English case of *Valentini v. Canalli*.¹⁵ Here the infant agreed with the defendant to take the lease of a house and pay £102 for the furniture in it. He paid £68 and gave a promissory note for the balance. After having paid and used the furniture for some months, he repudiated the contract and sued to recover back £68. The court rejected the claim, though it ordered that the lease should be cancelled and the promissory note delivered up, the court stating :

When an infant has paid for something and has consumed or used it, it is contrary to natural justice that he should recover back the money which he has paid. Here the plaintiff infant . . . had had the use of a quantity of furniture for some months. He could not give back this benefit or replace the defendant in the position in which he was before the contract.¹⁶

The position seems to be clear in the case of a consumable item which has been consumed by the infant; there is no question of restitution of money to the minor. The *Valentini* case was interpreted in *Pearce v. Brain*¹⁷ to mean that the minor can recover the money paid under a void contract if there has been a total failure of consideration. Anson suggests three possible solutions: ¹⁸ (i) if the infant has received any benefit, then he cannot recover. However, if he has received the goods, but never used them, he might still recover the money paid as he had received no benefit; (ii) he cannot recover the price unless there is a total failure of consideration;

14. He can claim restitution under s. 65 of the Indian Contract Act (but, *cf.* the *Mohori Bibee* case as to its applicability to minors; it seems it would apply in favour of the minor, as there the question was of its applicability against the minor) and ss. 30 and 33 of the Specific Relief Act.

15. (1889) 24 Q.B.D. 166.

16. *Id.* at 167.

17. (1929) 2 K.B. 310.

18. *Supra* note 1 at 188-89.

(iii) if *restitutio in integrum*, that is he can return the goods in the same condition, he can recover the price. He thinks that the first solution seems the most probable.

As far as the seller is concerned, he may not be allowed to recover back the goods. In *Stocks v. Wilson*¹⁹ Lush J. said:

I thought at the time there might be some foundation for this suggestion and that, as at common law an infant who when of full age avoided the contract would have divested himself of the property, so now it might be contended that the whole transaction was avoided by the Act (Infants Relief Act) and that the property had not passed at all. I am satisfied that that view is wrong and that the property passed by the delivery.²⁰

Thus, a trademan is bound by the contract.²¹ In such a situation if the seller has delivered the goods on credit, he cannot recover the price, the contract being void.

As for the converse situation, that is, sale by a minor, the position will be as follows. Where the minor has delivered the goods and has not received the price, he can recover the same from the purchaser.²² Can he recover the goods where the purchaser has paid him the price? There is no question of recovery of goods where they have been consumed. In other cases probably he will have to contend with the return of the goods in the condition in which he finds it, provided he pays back the price. Under section 35 of the Transfer of Property Act, it may be noted, it is not possible for a minor to make a sale of immovable property as an instrument executed by a minor cannot be admitted to registration.²³

VI RESTITUTION FROM THE MINOR

Section 65 of the Indian Contract Act provides:

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.

It was, however, held by the Privy Council in the *Mohori Bibee* case that this section did not apply to agreements with minors.

19. (1913) 2 K.B. 235.

20. *Id.* at 246.

21. See Cheshire and Fifoot, *supra* note 1 at 356.

22. *Supra* note 14; see also *infra* under "Restitution".

23. See the opinion of Srinivasa Ayyangar J. in *Raghava v. Srinivasa*, *supra* note 8; *Appasami Ayyangar v. Narayana Swami Iyer*, A.I.R. 1930 Mad. 945.

Therefore, the mortgagee cannot ask for restitution of loan advanced to a minor who had executed a mortgage in his favour as a security for the loan which mortgage the Privy Council declared to be void. The court recognised that section 41 of the Specific Relief Act, 1877 gave a discretion to the court to grant compensation which justice may require to another by a party at whose instance an instrument had been cancelled. Section 38 provided for a similar relief for a case of a rescission of a contract. But in this case the court refused to grant the relief requiring the minor to refund the loan on the ground that the money was advanced to a minor by the mortgagee with full knowledge of his infancy. Similarly, where the minor was advanced some money and he executed a promissory note in favour of the creditor who knew about the minority, the promissory note will be void and the minor cannot be asked to refund the money.²⁴

Where the action of the minor is fraudulent he will be asked to restore the benefit to the person concerned, provided the minor is the plaintiff.²⁵ In a case where he was a defendant there was a conflict of opinion amongst the Lahore²⁶ and Allahabad²⁷ High Courts. As to what extent the minor was obligated to restore the benefits—the former held that the minor was required not only to restore the specific property in his hands, but also the money benefit received under the contract, while the latter held that the restoration was limited to the specific property.

The position was not clear whether restoration could be ordered when the minor was innocent and the other party also did not know of the minority.²⁸

As a result of the recommendation of the Law Commission there is now a specific provision in section 33(2) of the Specific Relief Act, 1963 which says that where the minor has been sued under a void contract (that is, where he is a defendant), the court may, if he has received any benefit under the agreement from the other party, require him "to restore so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby." It appears this will be the position whether the minor has defrauded or not, except that he may not be liable where the other party knew of his minority and acted in spite of this knowledge.

24. *Batchu Veeraiah v. Chepuri Sarraju*, A.I.R. 1959 A.P. 100.

25. See Law Commission of India, *Report on the Specific Relief Act, 1877* (Ninth Report), para 90 (1958).

26. *Khan Gul v. Lakha Singh*, A.I.R. 1928 Lah. 609.

27. *Ajudhia Prasad v. Chandan Lal*, A. I. R. 1937 All. 610. Also *Latcharao v. Bhimayya*, A.I.R. 1956 A.P. 182.

28. See the *Batchu* case, *supra* note 24.

The position remains unchanged so far as the minor is a plaintiff. It may be better to clarify the position by adding a suitable provision in section 65 of the Contract Act making it applicable to those cases where a person is induced to enter into an agreement with a minor on a false representation that he is a major,²⁹ or where the person is able to prove that he was not aware of his minority (the burden to do so to be on the party concerned). Similarly, section 65 should apply in favour of the minor where, say, the minor has sold the goods to a person who has not paid him the price. Probably section 30 of the Specific Relief Act, 1963 is sufficient to take care of the situation.³⁰

VII GUARDIAN'S POWER TO BIND MINOR

A guardian can step in to supplement the minor's incapacity to contract. If it were otherwise, it may act as a great detriment to the property of the minor. On the other hand, it is also necessary to put restrictions on the guardian's power so as to guard against abuse of his power and prevent him from exploiting the property of the minor. The law tries to achieve these conflicting values.

A guardian for purposes of dealing with the property of a minor falls in any one of the following three categories:

- (i) Guardian appointed by a civil court or court of wards.
- (ii) Testamentary guardian.
- (iii) Natural guardian.

The appointment of a guardian by a civil court is governed by the Guardian and Wards Act, 1890.³¹ The Act prescribes as to how a guardian is to deal with a minor's property. Section 27 says that he is to deal with the property as a man of ordinary prudence would deal as if it were his own, and he may do all such acts which are reasonable and proper for the realisation, protection or benefit of the property. Further by section 29 the guardian is prohibited, without the previous permission of the court to (a) mortgage or charge or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; (b) to lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor. Section 30 makes disposal of any immovable property

29. See Law Commission of India, *Report on the Contract Act, 1872* (13th Report), para 37 (1958).

30. Section 30 reads:

On adjudging the rescission of a contract the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.

31. See *supra*, ch. VIII on "Guardianship".

by a guardian in contravention of the above provisions voidable at the instance of any other person affected thereby. The court shall not grant permission to dispose of immovable property except in the case of necessity or for an evident advantage to the minor.

The Guardians and Wards Act, 1890 also deals with the powers of the testamentary guardian. Section 28 provides that his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under the Act been declared to be a guardian by a court which may remove the restriction.

Natural guardians under the Hindu law are now governed by the Hindu Minority and Guardianship Act, 1956. His powers are the same as in the case of a guardian under the Guardians and Wards Act, 1890, except that the Hindu statute makes two things clear—(a) the guardian can in no case bind the minor by a personal covenant; (b) any disposal of immovable property without the permission of the court is voidable “at the instance of the minor or any person claiming under him.” These changes seem to have been made as a matter of abundant caution and do not affect the substance of the matter.

A few points may be noted. Under both the enactments a guardian cannot dispose of immovable property without the permission of the court. The statutes are silent as to the purchase of immovable property. For a testamentary guardian the permission of the court is not necessary for disposing of immovable property. Any disposal of immovable property in contravention of the statutory provisions is voidable at the instance of the minor or any person claiming under him. However, the statutes are silent as to “voidability” with regard to movable property.

As far as the Muslim law is concerned, the situation is governed by the personal law. Under the personal law a guardian can sell immovable property of the minor under the following situations:

- (a) where he can obtain double its value;
- (b) where the minor has no other property and the sale of it is absolutely necessary for his maintenance;
- (c) where the late incumbent died in debt which cannot be liquidated, but by sale of such property;
- (d) where there are some general provisions in the will which cannot be carried into effect without such sale;

- (e) where the produce of the property is not sufficient to defray the expenses of keeping it;
- (f) where the property may in danger of being destroyed; and
- (g) where it has been usurped and the guardian has reason to fear that there is no chance of fair restitution.³²

It was held by the Hyderabad High Court in *Amir Ahmmad v. Meer Nizam Ali*³³ that a Muslim guardian can bind a minor by personal covenants for the purchase of immovable property but such covenants are governed by strict conditions of necessity and benefit of minors.

It is clear from the foregoing statement of law that a guardian cannot contract on behalf of the minor so as to impose personal obligations on a minor. Thus, a guardian cannot enter into a valid service agreement on behalf of the minor,³⁴ or to start a new business on behalf of the minor by which the liability to pay rent would be incurred on behalf of the minor.³⁵ However, money advanced on loan to a person by the guardian for the benefit of a minor is enforceable (as it is for his benefit and does not impose any personal liability on him).³⁶

There had been some judicial difficulty in the case of sale or purchase of immovable property by the guardian on behalf of the minor and whether there could be specific enforcement of such an agreement.³⁷ As far as the sale of property is concerned, it is now clear that under the Hindu Minority and Guardianship Act, 1956, as well as the Guardians and Wards Act, 1890, this cannot be done without the permission of the court, otherwise the transaction will be voidable. Under the Muslim law this could be done if it is for the necessity or benefit of the minor.³⁸

The position is difficult with regard to purchase of property by the guardian on behalf of the minor. The two statutes do not specifically

32. See *Amir Ahmmad v. Meera Nizam Ali*, A.I.R. 1952 Hyd. 120.

33. *Ibid.*

34. *Raja Rani v. Prem Adib*, *supra* note 7.

35. *Jaykant v. Durgashankar*, A.I.R. 1970 Guj. 1908.

36. *Gursaran Lal v. Seral Kumar*, A.I.R. 1956 All. 136.

37. See *Mir Sarwarajan v. Fakhruddin Mahomed*, 13 I.C. 331 (1912) (the Privy Council holding that it was not within the competence of a guardian of a minor to bind the minor or minor's estate by a contract for the purchase of immovable property). But for cases to the contrary, see *Subramanyam v. Subba Rao*, A.I.R. 1948 P.C. 95; *Suryaprakasam v. Gangaraju*, A.I.R. 1956 A.P. 33; the *Amir Ahmmad* case, *supra* note 32.

38. The *Amir Ahmmad* case, *ibid.*

deal with this aspect. However, both the Andhra Pradesh and the Hyderabad High Courts held that an agreement to sell or purchase immovable property by the guardian on behalf of the minor could be specifically enforced, if it was for the benefit or necessity of the minor — the former case³⁹ involving the Hindu minor and the latter⁴⁰ the Muslim. A different conclusion was reached by the Madhya Pradesh High Court in *Ramchandra v. Manikchand*,⁴¹ but the court overlooked the provisions of section 8 (1) (which is on the lines of section 27 of the Guardians and Wards Act) of the Hindu Minority and Guardianship Act. The Mysore High Court relying on this section has held⁴² that “the natural guardian of a Hindu minor is competent to enter into a contract to purchase (immovable property) provided the conditions specified in section 8(1) are satisfied.”⁴³

VIII CONCLUSION

The position of the law on the whole is satisfactory. However, in one respect the law needs a change. It is suggested that section 11 of the Contract Act may be amended so as to exclude from its purview contracts of service of minors if in the opinion of the court they are beneficial to the minor.

It may also be better to clarify the position in the matter of restitution where the minor is the plaintiff. Section 65 may be made applicable to those cases where a person is induced to enter into an agreement with a minor on a false representation that he is a minor, or where a person is able to prove that he was not aware of his minority (the burden to do so on the party concerned). Similarly, section 65 should apply in favour of the minor where, say, the minor has sold the goods to a person who has not paid the price.

39. The *Suryaprakasam* case, *supra* note 37.

40. The *Amir Ahmmad* case, *supra* note 32.

41. A.I.R. 1950 M.P. 150.

42. *Linga Reddy v. Ramachdrappa*, A.I.R. 1971 Mys.198,

43. *Id.* at 198.