

CHAPTER XIV

SUITS BY AND AGAINST MINORS

LAW INSISTS that the minor's interests in litigation should be taken care of and he should be properly represented by a person who can safeguard his interests. A minor, for purposes of civil litigation in India, has been defined to mean a person who has not attained majority under the provisions of the Indian Majority Act, 1875, that is a person who has not completed the age of eighteen years and in the case of a minor of whose person or property a guardian has been appointed by a court, or whose property is under a court of wards, a person who has not attained the age of 21 years.¹

The law contains adequate provisions to safeguard the interests of the minor in the matter of civil litigation. Order 32 of the Civil Procedure Code deals with suits by or against minors. It is imperative that no proceedings shall be taken by a minor without a next friend.

Similarly, in case of suits filed against defendants, who are minors, the appointment of a guardian is to be made by the court. Qualifications prescribed for acting as the next friend or guardian for purposes of the suit are that he should be a person of sound mind, should have attained maturity and that his interest is not adverse to the minor. Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the court considers

1. S. 3 of the Indian Majority Act, 1875.

for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

A notice of appointment of a guardian by the court is to be given to any guardian of the minor appointed or declared by a competent authority. In the absence of such guardian, the notice has to be given to the father or the other natural guardian of the child. Disregard of this provision is fatal to the suit. The court may, if it thinks fit, issue a notice to the minor also.

In *Ganga Prasad Chowdhry v. Umbica Churu Coondoo*,² a suit was brought against a minor widow as heir of her deceased husband. She was described in the cause title of the plaint as "the deceased debtor Ramnath Acharjee's heir and minor widow Benodini Dabee's mother and guardian Anundomyee Dassec." The plaintiff obtained no order for the appointment of a guardian *ad litem*. He however, obtained a decree wherein the minor defendant was described in the same way. It was, therefore, held that minor was neither a party to the original suit nor to the decree and that none of her property passed upon a sale in execution of such decree.

In *Nathumal v. Mohd. Nazir Beg*,³ it was held that where not only the service of the notice on the proposed guardian was defective but no order was made by the court, an effective decree could not be passed against the minor. A decree passed against the minor in these circumstances is null and void. Where, however, a guardian has been recognised by the court and the minor has been effectively represented, the fact that the court did not make a formal order appointing the guardian or there was some minor defect in the procedure in appointing him will not invalidate the proceedings unless this has prejudiced the minor's case. In *Walian v. Banke Behari*,^{3a} service on the minor's mother who was named as their guardian had been affected through the minors' major brother who was the manager of the joint Hindu family of which the minors were members, and she had effectively represented them in the suit and with the sanction of the court, though no formal order had been made appointing her as the guardian. In these circumstances the Privy Council held that the absence of a formal order of appointment was not fatal to the suit unless it was shown that that the defect prejudiced the minors.

The next friend of the minor may retire but he may not do so without first procuring a fit person to be put in his place. The next

2. XIV I.L.R. Cal. 754.

3. A.I.R. 1955 All. 584.

3a. (1902-1903) 30 I.A. 182 (P.C.).

friend may be removed by the court where his interest is adverse to that of the minor, or where he does not do his duty, or for any sufficient cause, etc. Similarly, the court may permit a guardian to retire or may remove him where the guardian desires to retire or does not do his duty.

A further safeguard to protect the interest of the minor that has been provided is that the next friend or the guardian shall not, without the leave of the court, receive any money or movable property on behalf of a minor by way of compromise before decree or order, or under a decree or order in favour of the minor. Also, it has been provided that the next friend or the guardian shall not without the leave of the court, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he so acts. Any such agreement or compromise entered into without the leave of the court shall be voidable against all parties other than the minor.

The above broadly are the provisions with regard to the protection of the interests of the minor in the matter of suits. It is beyond the scope of this work to discuss all the nuances or fine points of the legal provisions. However, the two important problems in this connection may be elaborated.

An important question is whether a minor can impeach a decree passed against him as a result of fraud or collusion or gross negligence of the next friend or guardian. The position seems to be well established that a minor may do so through a suit where there was fraud or collusion,⁴ but the law is uncertain with regard to gross negligence. Mulla thinks that "the weight of judicial opinion is in favour of the view that a suit lies to set aside a decree against a minor on the ground of negligence of the guardian"⁵ The Law Commission, while discussing the provisions relating to the suits by or against minors, proceeds on the basis that the minor may obtain suitable relief on account of the misconduct or gross negligence of the guardian.⁶

Secondly, the position of the law is clear that where the next friend or the guardian had an adverse interest which caused prejudice to the minor, the decree passed in such a case could be set aside.⁷ However, the

4. See Mulla, 11 *Code of Civil Procedure* 1369 (1967).

5. *Id.*; also *Sham Singh v. Jaswant Singh*, A.I.R. 1971 P. & H. 462. In this case the suit was filed by a minor through a next friend who persistently refused to appear before the court. It was held that the matter was to be reheard again where the suit was dismissed by the trial court on that account.

6. Law Commission of India, *Fifty-fourth Report on the Code of Civil Procedure* 231 (1973).

7. *Ibid.*

Law Commission states that, "Mere adverse interests is not, according to the view of most High Courts, a ground for setting aside the decree."⁸ It has, therefore, recommended that the matter may be put beyond doubt by expressly enacting that, "No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor."⁹

8 . *Ibid.*; also Mulla, *supra* note 4 at 1374 .

9 . *Supra* note 6.