

MINOR'S CAPACITY TO CONTRACT

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Abstract

According to the Indian Contract Act the minor is not competent to enter into agreement or contract, because he does not have the certain knowledge to enter into the contract, and there are many disadvantages of entering a contract with minor for ex it can't be sued in court, and the contract with minor will be void-ab-inito (void from beginning) as the coin has two faces the contract entered with minor will also have some advantages like the rule of estoppel, doctrine of estoppel won't be in the case of minor's.

Key Words: Minor, Contract, Agreement.

Introduction

Section 11 of Indian Contract Act 1872, defines minor's capacity to contract.

Any person who is below the age of 18 years will be certified as minor.

The essentials for entering into a valid contract are: The person should be major (above 18 years), The person should be sound-minded, He should not be disqualified by law.

Section 11 of Indian Contract Act specifies that the essential elements to create a valid contract are:

1. The person must be a major according to eyes of law.

2. He must be Sound minded and he must know all the rules and regulations of the contract.

3. He must not be disqualified by law.

What is minor agreement : A minor's agreement is an agreement when a minor enters into an agreement which will be void-ab-inito according to the Indian Contract Act 1872. Section 10 of Indian Contract Act says that the parties entering into a contract must be competent to contract. The Indian Contract Act says that an individual person who attains the age of majority will be held competent to contract. The minor must have a guardian who attains the age of 21 years and he should also satisfy the eligibility criteria according to the rules and regulations. There is no legal obligation arising from a minor's agreement and contract so, the person who is not at the majority can't enter into a contract.

Minor is considered incompetent to enter into contract according to the rules and regulations of the Indian Contract Act 1872, this is so because minor's are not mature in nature to be responsible with respect to legal matters. The contract of apprenticeship is the service contract and it binds the minor by providing benefits to them. But such an apprenticeship contract is made by a parent or a guardian of the minor.

Disadvantages of entering a contract with a minor: Contract with minor person will be void-ab-inito. Hence it can't be rectified in the eyes of law. If the contract is made when the person is minor and he can't be rectified the contract after he attains the majority. As according to the eyes of the law the minor cannot enter into an contract, if he enters wrongly by willingness of the partners he will be not liable for the management and he will not be liable for further circumstances and if any mistake or any wrongfull thing happened among them or in contract they will not have the right to sue in front of Court because that contract consists of a minor partner.

Can minor be a partner? According to section 30 of the Indian Partnership Act, the minor cannot be a partner, he may be admitted to the benefits of the partnership by an agreement executed through his guardian or the other partners. The minor can't be an agent or principle, for becoming an agent the person should be major and should be sound-minded, he also cannot employ an agent.

Minor as a partner: Section 30 of Indian Partnership Act states that the minor can't be a partner. Even with the willingness or liability of the parents or guardians, he (the minor person) will not be liable for it. Because minor is disqualified from entering into contract legally, but he may be admitted to the benefits of a partnership with the mutual consent of all the partners (but no liability), he cannot take action in firm's management. The minors will not have the full legal capacity as of adults to enter into the contract. Due to lack of capacity to make a contract the minor is not allowed to make a contract so, when a minor who signs into a contract can either honor

the deal or void the contract. Under the eyes of the law, the minor does not have any legal rights.

CASE LAW: MOHORI BIBEE vs DHARMODAS GHOSE

Mohori Bibee vs Dharmodas Ghose¹ is a case that the ambit of minors agreement In this case law the court declared that law that any contract is made by the minor or any minor's agreement is void and it has also been strictly followed and is still growing also. This was the case of the year 1903 in which the Privy Council held that a minor's contract is void ab initio which is void from the beginning.

Facts of the case: The plaintiff Dharmodas Ghosh, when he was a minor, mortgaged his property to the defendant, a moneylender. At that time, the defendant's attorney knew the plaintiff's age. The plaintiff later paid only Rs 8000 but refused to pay the rest of the money. The plaintiff's mother was his next friend (legal guardian) at that time, so he commenced an action against the defendant saying that at the time of making of a contract, he was a minor, so the contract being void one, he is not bound by the same. Dharmodas Ghose, who was a minor at the time, obtained a loan from Brahmodutt, a lender in Calcutta, by claiming to be an adult and signing a mortgage deed (Mortgage Deed) in his favor. At the time the mortgage was being considered for advance money, Kedarnath, Brahmodutt's agent, had received information that the respondent was a minor; thus, he could not execute the deed. Nonetheless, he signed a mortgage deal with Dharmodas Ghose. In this case, it is concluded that any agreement or deed in which the party with minor is included such deed or agreement shall be declared as void because such agreements are not the correct agreement in the eyes of law.

1.Ilr (1903) 30 Cal 539 (Pc)

Rule propounded:

- 1.The contract done with the minor is void-ab-initio.
- 2.The principle of the restriction cannot apply in the above case because both parties were aware that the contract was being made by a minor
- 3.Section 64 of the Contract Act against the minor does not apply as these sections require that the parties to the contract should be done with the minor. From this case law, the final decision given was the agreements made with the minor are void-ab-initio (from the beginning). If agreements are made when the person is in minority and it cannot be rectified when he attains the age of majority. So According to Indian Contract Act 1872, the minor (below 18years) cannot enter into a contract According to the Indian Majority Act 1875, declared that the age of the majority of every person must be 18 years. If a minor has a guardian or court of Ward Looking after him, his age must be of the majority becomes 21years. Hence the contract with the minor less than 18 years will be void-ab-initio because
- 4.He is not having any registration rights. Rules for Agreement with minor parties.
- 5.Parents or guardians of minors can name them in contracts only if it benefits them but in this case, the minor cannot be personally liable.
- 6.Transfer of Property Act allows minors to receive property but prohibits them from transferring it.
- 7.The individual who has not attained the age of majority in normal cases and 21 years of guardian is appointed by the Court and he should be of sound mind while the time of contract and should not be disqualified by law. A contract entered by the guardian of the minor for his benefit: In that case, a minor can sue the other party when it does not perform its promise.

In case of **Great American Insurance Co Ltd vs Madanlal Sonulal** ² the minor sued the opposite party for not performing the promise and the contract was entered by the minor's guardian with the other party and it was considered a valid contract. In this case the plaintiff Madanlal Sonulal a minor by his next friend Goverdhandas Mohanlal and the defendant was The Great American Insurance in New York, USA. The plaintiff was only the surviving son of the joint hindu family carrying out a business at Devalgum, firm named Surajmal Sonulal the whole business will be carried under the supervision of Goverdhanlal Mohanlal who was also the sister of Plaintiff's sister and whom Plaintiff resides, the firm was effected with the fire insurance along with Defendants on cotton bales. On the actual effected date of the fire insurance the cotton bales got burnt and the plaintiff's sued the defendants company for the recovery of loss.

Contracts beneficial to minors: The minor can enter into one party's contract but he will not be liable but only beneficiary, in the contract which he was entered in that he can be as a promisee. One cannot order a specific performance against the minor.

Negotiable instrument regarded to minor: In the case of Negotiable instruments minor will have the right to draw, draw, deliver, endorse and negotiate the negotiable instruments, if any person is taking or receiving any goods from the minor he will be liable to pay for the goods he purchased. A minor can receive the benefits of partnership but can enter contract as partner, a minor can be registered as a member to fully paid share of the company. In case the minor owns the shares with the transmission then the minor's guardian name will be registered as a member.

Minor in a Contract of Marriage: In the case of marriage the minor's cannot do their marriage even though one of them is major and one is minor (the minor cannot pick and choose the provisions of the contract that he or she likes or finds favorable). According to the Hindu Marriage Act 1955, the two persons who are willing to do marriage, they both must be majors according to the rules and regulations of Hindu Marriage Act. The age for the majority which deals with marriages is 21 for both girls and boys. But according to the Hindu Marriage Act if the marriage is done when the people are minors that is not valid according to the law. The general rule regarding the agreement or contract with minor is such a contract is voidable by the minor, this rule is to establish to protect the younger individuals who may not fully grasp the consequences of the certain contracts.

Since such a rule can be abused otherwise lead to harsh results, a variety of exceptions have been carved out of the general voidability of a minor's contract. A minor can void the contract in one of two ways. The first way is for him or her to file a lawsuit asking the court to void the contract. The second way is to raise the affirmative defense of lack of capacity if he or she has been sued.

2.(1935) 37 BOMLR 461

If a minor voids the contract, he or she must disaffirm the entire contract. Statutes and Courts provide minors and infants the ability to exit contracts at their discretion, since this rule can cause harsh results for the other party or be abused by minors, some exceptions were created.

The rationale behind section 11 is that all parties to a contract must be competent to understand their obligations, Since a mature mind is important for this purpose, the law prohibits agreement with minor parties. In any of the cases the minor (below 18) is not allowed to enter into the contract by the rules and regulations of the law, but for the minor's some advantages were also given accordingly

Advantages of minor's: According to the law there are many advantages to the minor's in many cases like the doctrine of restitution cannot be applied in the case of minor and the rule of estoppel under the evidence law does not apply to minors under contractual obligations. Even if a minor forms a contract claiming majority age, legal obligations cannot arise against him. The doctrine of Estoppel: Doctrine of Estoppel is not applicable in the case of a minor, the rule is that the estoppel action can't be brought against a minor even if he is falsely represented that he had reached the age of majority when the agreement was made, he is permitted to plead minority as a defense to escape responsibility under the agreement. Even if the minor is falsely represented himself as a major and takes a loan or enters into a contract, he can plead his minority. The rule of estoppel cannot be applied against a minor, he can plead his minority in the defense.

In the case of American Insurance VS, Madan Lal² the guardian on the behalf of her son entered into an insurance contract in respect of fire for the minor's property. When the property was damaged and the minor asked for the compensation, the insurer denied it by saying that a contract with a minor is void. But later the court held that this contract was enforceable, and he is liable to pay compensation. If a person is incapable of entering into a contract is supplied by another person with necessities of life, the person who has supplied is entitled to get reimbursement from the property of such incompetent person including a child as well. Why The Capacity Of Contract Is Important Section 11 of the Indian Contract Act declares that the people who are competent to enter into a contract, Competency to contract is of great importance for its absence renders the agreements void. Hence the aspect of the capacity to contract attracts greater attention at the time of agreeing. The competency of parties to contract is one of the most important requirements to make an agreement valid and enforceable in a court of law.

A contract made by a person who does not possess the mental capacity to understand the nature and consequences of the contract is void-ab-initio. One of the major requirements of the agreement is Competence

which is defined in Section 11 Of the Indian Contract Act. When the minor cannot be entered into a contract he can be beneficiary by one of the benefits. According to Section 30 of the Indian Partnership Act 1932, specifies that when a minor will not be taken as a partner in the partnership firm the benefits of the firm can be extended to him. A minor cannot be declared insolvent as he cannot avail debts, also if some dues are pending from the properties of the minor and he is not personally liable for the same. A joint contract between minor and major: If the joint contract is made between the adult and minor, executed by the guardian on behalf of the minor the whole liability of the minor and contract falls on the adult and the adult will be personally liable for it. If the minor enters into the contract by misrepresenting his age, then no one can stop him from disclosing their age, the minor is not liable for inducing another party into a contract.

