satisfactorily explain the delay in moving this Court. The other matters will be determined by the learned Single Judge.

(12) The petition will now be set down for hearing before the learned Single Judge who will, if necessary, give each petitioner, an opportunity of making out his case on affidavits as to the matter of laches. The State Government as well as the private respondents will be given an opportunity to controvert those affidavits before each individual case is settled.

PATTAR, J.,—I agree and have nothing to add.

M. R. SHARMA, J.,—I agree.

B.S.G.

FULL BENCH

Before D. K. Mahajan, C. J., and R. S. Narula and Pritam Singh Pattar, JJ,

AMRIK SINGH, ETC.,—*Appellants.*

versus

KARNAIL SINGH, ETC.,—*Respondents.*

Regular Second Appeal No. 471 of 1972

May 2, 1974.

Code of Civil Procedure (Act No. V of 1908)—Order 32, rule 3—Suit filed against major and minor defendants—Provisions of order 32 rule 3 not complied with in appointing the guardian ad-litem of the minors—Interest of major defendants identical with the minors—Decree passed in such suit—Whether a nullity.

Held, that too much insistence on technical provisions of a procedural law can at time lead to absurd results and cause injustice to parties. Each case has to be decided on its own facts and it is not appropriate to lay down any general rule. The crux of the matter is that where a minor is a defendant in a suit it has to be seen if he is effectively represented. The non-compliance with the provisions of Order 32, rule 3 of Code of Civil Procedure, which no doubt are mandatory, will not render the decree passed in the suit as void in every case. It is only where a Court comes to the conclusion that the minor was not effectively represented and thus he was in fact not a party to the proceedings that the decree passed will be nullity and the minor can either ignore it or avoid it. Where a suit is filed against

major and minor defendants and the minors are represented by a guardian ad-litem although the appointment of the guardian is not strictly in accordance with the procedure laid down in order 32, rule 3 of the Code, yet if the interests of the major and minor defendants are identical and the major defendants effectively prosecute the litigation, it can hardly be said that the minors are not effectively represented. The decree passed in such a suit will not be nullity. (Paras 13 and 24).

Case referred by Hon'ble Mr. Justice D. K. Mahajan to a Larger Bench on 22nd September, 1972 for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. D. K. Mahajan, Hon'ble Mr. Justice R. S. Narula and Hon'ble Mr. Justice Pritam Singh Pattar finally decided the case on 2nd May, 1974.

Regular Second Appeal from the decree of the Court of Shri M. L. Jain, District Judge, Karnal dated the 2nd day of March, 1972, affirming with costs of Shri V. K. Jain, Sub Judge 1st Class, Kaithal dated the 30th April, 1971, granting the plaintiff a decree with costs for possession by pre-emption of the suit land on payment of Rs. 21412.50 P. on or before 30th May, 1971 to defendants 1 to 4 failing which the suit of the plaintiff shall stand dismissed with costs and further ordering that before depositing the above amount, the plaintiff could deduct the amount of Zare panjum deposited by him, if any. The appeal No. 48/13 of 1971 filed by Satnam Singh and Ajit Singh vendees was also dismissed with costs.

P. S. Jain and S. S. Rathor, Advocates, *for the appellants.*

S. L. Puri, Advocate with Muneshwar Puri, Rameshwar Puri and V. K. Jhanji, Advocates, *for the respondents.*

JUDGMENT

MAHAJAN, C.J.—(1) The question which has necessitated this case to be heard by a larger Bench is, whether no-compliance with the provisions of Order 32, rule 3, Code of Civil Procedure in every case renders the decree a nullity?

(2) The Courts below decreed the plaintiff's suit. This decree was passed in a suit for possession by pre-emption filed by Karnail Singh plaintiff. The sale sought to be pre-empted was made by Asa Singh, grand-father of the plaintiff. The vendees, defendants 1 to 4, are Amrik Singh and three others. They are real brothers. Defendants 3 and 4, Amrik Singh and Vir Singh are minors. In the plaint the minors were sued through their real brother Satnam Singh as their guardian. An application was made under Order 32, rule 3 of the Code of Civil Procedure to the effect that Satnam Singh,

defendant No. 1, the eldest brother of the minors, be appointed their guardian. It was also mentioned that Ajit Singh brother, Mangal Singh father, Smt. Tirath Kaur mother and an officer of the Court were fit to be appointed as guardian of the minors. It was stated that defendant No. 1 had no interest adverse to the minors; and in case defendant No. 1 refuses to act as the guardian anyone out of the other persons mentioned be appointed as the guardian. Notice of this application was issued to the minors as well as defendant 2, the father and the mother. Notice was not served on the father or the mother, but it was served on the two defendants as well as on the minors. Defendant No. 1 refused to act as the guardian and thereafter the Court proceeded to appoint Shri Madan Gopal, Advocate as the Court guardian for defendants 3 and 4.

(3) The suit was contested by the two major brothers on all conceivable grounds. The trial Court decreed the suit and this decision has been maintained by the learned District Judge. Before the learned District Judge, the contention was raised that the decree of the trial Court was a nullity, inasmuch as, the provisions of Order 32, rule 3 had not been complied with. This contention was negatived by the lower appellate Court. Against the decision of the lower appellate Court, a second appeal was preferred to this Court. This appeal was placed before me on 22nd September, 1972, and I directed that it be heard by a Full Bench so far as the two minors were concerned. The appeal filed by the major defendants was rejected on merits. On the merits, the decision with regard to the minor defendants would be the same.

(4) Before proceeding to determine the question referred it would be appropriate to notice section 99 of the Code of Civil Procedure which is in the following terms:

> "No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court."

In *Kiran Singh* v. *Chaman Paswan* (1), it was observed by their Lordships of the Supreme Court, while dealing with section 99 that "when a case had been tried by a Court on the merits and judgment

(1) A.I.R. 1954 S.C. 340.

rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice.....". While dealing with the provisions of the Code of Civil Procedure it was observed in *Sangram Singh* v. *Election Tribunal, Kotah* (2) as follows:—

> "Now a code of procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should, therefore, be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it.
>
> Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

(5) The question that requires determination is, as to whether the non-compliance with the provisions of Order 32, rule 3, the relevant part of which is in the following terms, invariably renders the decision of the Court a nullity?—

> 'R-3 (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.
>
> (2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(2) A.I.R. 1955 S.C. 425.

(3) The plaintiff shall file with his plaint a list of relatives of the minor and other persons, with their addresses, who *prima facie* are most likely to be capable of acting as guardian for the suit for a minor defendant. The list shall constitute an application by the plaintiff under sub-rule (2), above.

(4) .....

(5) .....

(6) Any application for the appointment of a guardian for the suit and any list furnished under this rule shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that each person proposed is a fit person to be so appointed.

(7) No order shall be made on any application under this rule except upon notice to any guardian of the minor appointed or declared by an authority competent in that behalf or, where there is no such guardian, upon notice to the father or other natural guardian of the minor or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule :

Provided that the Court may, if it sees fit, issue notice to the minor also."

(6) It may be mentioned that all illegal decisions are not necessarily nullities. The illegalities would naturally render a decision imperfect. If the illegality strikes at the root of a matter and causes injustice, surely it has to be removed. But if the illegality results in no injustice, the mere fact that the decision is illegal would not render the decision a nullity. It is in the light of these observations that the present case has to be approached. Now, what are the facts proved? They are that the sale sought to be pre-empted is in favour of four brothers, two of whom were majors. Thus, the interests of the minor brothers as well as the major brothers were identical. The major brothers contested the suit for pre-emption on all conceivable grounds. No doubt, the trial Court

proceeded correctly in the matter of Order 32, rule 3(7), but failed to comply with same to its fullest extent. It did not wait to see the service of notice on the father and the mother. The brother had refused to act and in this situation a Court guardian was appointed. It is on these facts that it has to be determined whether there has been a failure of justice and the interests of the minors have been adversely affected. To say the least, this has not happened. So far as the decided cases go, there seems to be an apparent conflict, but it is not real. In fact, each case has turned on its own peculiar facts and, therefore, the observations made therein have necessarily to be confined to the facts of that particular case.

(7) I now propose to deal with the cases cited by the learned counsel for the appellants. They are:

(1) *Sayed Mahbub Hussain Shah and others* v. *Anjuman Imdad Qarza* (3);

(2) *Rajendra Prasad* v. *Prabodh Chandra Mitra* (4) ;

(3) *Krishna Behari* v. *Kedar Nath* (5) ;

(4) *Ramchandar Singh* v. *Gopi Krishna* (6) ;

(5) *Ramachandra Pd. Singh and others* v. *Rampunit Singh and others* (7) ;

(6) *Nirmal Chandra Ray* v. *Khandu Ghose* (8) ;

(7) *S. Govindan* v. *Lakshmi Bharathi* (9) ;

(8) *Inder Pal Singh* v. *Sarnam Singh* (10) ; and

(9) *Rangammal* v. *Minor Appasami* (11).

(8) So far as *Sayed Mahbub Hussain Shah's case* (3) is concerned, this decision is an authority for the proposition that if a

(3) A.I.R. 1942 Lah. 129.
(4) A.I.R. 1921 Pat. 25.
(5) A.I.R. 1954 Pat. 349.
(6) A.I.R. 1957 Pat. 260.
(7) A.I.R. 1968 Pat. 12.
(8) A.I.R. 1965 Cal. 562.
(9) A.I.R. 1964 Ker. 244.
(10) A.I.R. 1951 All. 823.
(11) A.I.R. 1973 Mad. 12.

minor is not represented at all, the decree against him is null and void. The question is that where a guardian *ad-litem* has been appointed by the Court but the procedure of Order 32, rule 3 is not strictly followed, can the decree be said to be a nullity? So far as the minors are concerned, they are represented. However, the person who represents them has been appointed by not strictly following the procedure prescribed. At best, this can amount to an illegality, but not of such a nature as to render the decree void. In the case before the Lahore High Court, no guardian *ad-litem* had at all been appointed for the minors.

(9) So far as *Rajendra Prasad's case* (4) is concerned, in this case a guardian *ad-litem* was appointed upon the application made by the plaintiff and no notice of that application was served upon the minors or upon the guardian whom it was proposed to appoint, and in this situation it was held that the order was without jurisdiction. In this case, to start with the minors were represented by their mother who died and after her death an application was made by the plaintiff for the appointment of a Court guardian and no notice of that application was given to the minors or to the guardian whom it was proposed to appoint. The notice to the proposed guardian is essential for the reason that he may not like to act as the guardian and if that is so, the interests of the minor would suffer. This case, therefore, has no analogy to the facts of the present case.

(10) In *Krishna Behari's case* (5), mother was the certificated guardian but in spite of that one Maulvi Muhammad Majeed, a pleader, was appointed guardian *ad-litem*. The process was also served on the mother but she was not described in the process as the certificated guardian. In spite of this infirmity it was held as follows:—

> "When the Court, in ignorance of the fact that the minor has a guardian appointed by a competent authority, appoints another person, that does not by itself vitiate either the decree passed in the suit or the sale held in execution of the decree. The whole question is whether any prejudice has been caused to the minor, and, in the absence of any allegation of fraud or prejudice to the minor caused by the irregularity, the proceedings must be regarded as valid."

It will appear that this decision does not support the contention of the learned counsel and is in line with the view which I am inclined to take, namely, that the illegality in not strictly adhering to the provisions of Order 32, rule 3 does not necessarily render the decree void, or, in other words, a nullity.

(11) The case on which very strong reliance has been placed by the learned counsel for the appellants is *Ramchandar Singh* v. *Gopi Krishna* (6). In this case, during the execution proceedings, on the death of the father his minor son was substituted under the guardianship of his mother. No notice under Order 32, rule 3(4) was served either on the minor or on his mother, his proposed guardian. A pleader was appointed as a guardian *ad-litem*. The plaintiff on attaining majority brought a suit for declaration that the sale of the plaintiff's share was without jurisdiction, void and not binding on him. The trial Court held that the sale would not bind the minor because a pleader had been appointed guardian *ad-litem* without any notice under Order 32, rule 3(4) to the minor or his natural guardian. When the matter came to the High Court, it was placed before a Single Judge who referred the same to a Division Bench. It was observed by the Division Bench:—

> "If therefore, a minor is not effectively represented in a suit, or in an execution proceeding, such a defect is not one of mere form, but of substance, and, it goes to the root of the jurisdiction of the Court, and, therefore, such a minor in the eye of law is not a party to such a suit, or an execution proceeding, and, as such, no order passed, or decree made against him in such a suit, and no proceeding taken, or sale held in execution proceeding against him *ex-parte* in his absence will bind him or his estate at all".

Thereafter, the learned Judges discussed the entire case law on the subject including *Krishna Behari's case* (5), and held as follows:—

> "1. Order 32, rule 3(4) of the Code is mandatory and imperative, and its terms must be strictly complied with. Unless notices in terms of Order 32, rule 3(4) are served on the minor and his guardian, and, when in spite of service of such notice they do not choose to appear, only then and, then only, the Court gets jurisdiction to appoint a guardian *ad-litem* for such a minor. But, even then, before

appointing a guardian for the minor the Court must, as required by 0.32, R. 4(3), obtain consent of the person proposed to be appointed guardian for the minor.

Disobedience of these mandatory provisons leads to the consequence that there is no proper party to the suit, in the eye of law, and the minor is not a party to the suit, or proceeding, notwithstanding that his name appears on the record, and, as such, he must be deemed in law to be wholly unrepresented, and, consequently the jurisdiction of the Court to proceed against such a minor will be ousted and, the Court will have no jurisdiction to render any judgment, or pass any order against such a minor, and, when such a minor is not a party to an execution proceeding the execution Court also has no jurisdiction to sell his property, because the Court has no jurisdiction to sell the property of a person, who is not a party to the suit, or the execution proceeding.

The mere fact that a pleader guardian-ad-litem has been appointed by the Court, without complying with the mandatory provisons of 0.32, R. 3 (4) of the Code, and the further fact that such a pleader-guardian has acted on behalf of such a minor, cannot clothe him with the power to act as such on behalf of such a minor, and he must be considered to be disqualified from acting as such guardian under the express provisions of Order 32, rule 3(4) of the Code, and therefore, in such a case also, the minor is not properly a party to the proceeding, and the judgment rendered or any order passed against him is without jurisdiction, and null and void, and the Court will have no jurisdiction in such a case also to proceed to sell his property.

2. Where, however, there is a mere defect, such as absence of a formal order appointing a person as guardian-ad-litem, notwithstanding that the notice in terms of Order 32, rule 3(4), and, Order 32, rule 4(3) have been served, such a defect in the appointment of the guardian will not necessarily be fatal to the proceeding, unless it is shown that the minor was prejudiced by the defect because such a defect is a mere irregularity, and a defect of mere form, and not of substance, and it does not go to the root of

the jurisdiction of the Court to render any judgment against such a minor.

3. When, therefore, sub-rule (4) of rule 3 of Order 32 of the Code, had been broken and completely disregarded, such a disobedience results in nullification of the order appointing guardian, and, therefore, in such a case the question of prejudice or no prejudice to the minor is irrelevant. Such a defect being of substance and going to the root of the jurisdiction of the Court, the question of prejudice or no prejudice to the minor is not the determining factor in order to ascertain the invalidity of the proceeding against such a minor. Such a proceeding is null and void against the minor, even when no prejudice has been caused to him by such a defect."

(12) It is interesting to observe that while dealing with *Krishna Behari's case* (5) which decision is more in line with the facts of the present case, the learned Judges observed as follows:—

"The sixth and the last case, relied upon is of *Krishna Behari* v. *Kedar Nath* (5) decided by Narayan and Jamuar JJ. In this case, the only defect was that instead of a certificated guardian in ignorance another person was appointed guardian of the minor. It was held that as no prejudice had been caused to the minor, and there was no fraud, this irregularity did not make the proceedings invalid.

On a review of all the above mentioned cases of this Court, and, which have been relied upon by the appellants, it will, therefore, appear that :

(i) None of the cases, except the case of *Panda Sat Dev Narain* v. *Ramayan Tiwari, etc.* (12), were cases in which there was non-compliance of Order 32, Rule 3(4);

(ii) Some of these cases were cases in which Order 32, Rule 4(3) had been violated, but the Courts did not consider and refer to the earliest Bench decision of this Court in *Mohan Krishna Dhar, etc.* v. *Har Parshad, etc.* (13), which was exactly on the point, and, which held a contrary view;

(12) A.I.R. 1923, Patna 242 (2).
(13) A.I.R. 1917, Patna 161;

(iii) In the rest of the cases, there was only an absence of a formal order of appointment, which was covered by *Walian* v. *Banke Behari Pershad Singh* (14);

(iv) In none of the cases, the Court tried to find out the basis of *Walian's case* (14), nor did the Court consider the most important fact that Order 32, rule 4(3) was a new provision introduced for the first time only in the Code of 1908, and, that there was no similar provision in the Code of 1882, on the basis of which *Walian's case* (14) was decided, and which fact made a material difference in the legal position; and

(v) In *Panda Satdeo Narain* v. *Ramayan Tewari etc.* (12) also, P. R. Das J., who delivered the main judgment, as stated before, did not either consider the earlier Bench decisions of this Court in *Rajendra Prasad's case* (4) and *Mohan Krishna Dhar, etc.* v. *Har Parshad, etc.* (13), nor, did his Lordship keep in view the fact that in the Code of 1882, which was the basis of *Walian's case* (14), there was no provision similar to either Order 32, rule 3(4), or, Order 32, rule 4(3) of the Code of 1908.

For these reasons, I do not think the above cases are any authority here. I would, therefore, follow *Rajendra Prasad* v. *Prabodh Chandra Mitia* (4); *Rani Chhattra Kumari Debi* v. *Panda Radhamohan Singh* (15); *Khiaraimal, etc.* v. *Daim.* etc. (16) and *Baraik Ram Govind Singh, etc.* v. *Chowra Uraon, etc.* (17) and hold that disregard of Order 32, Rule 3(4) or even Order 32, Rule 4(3) of the Code, makes the order appointing a guardian for a minor without jurisdiction and null and void."

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(14) I.L.R. 30 Cal. 1021.

(15) A.I.R. 1922 Pat. 291.

(16) 32 I.A. 23.

(17) A.I.R. 1938 Pat. 97.

(13) I may, with due respect to the learned Judges, mention that the observations of the Supreme Court in *Sangram Singh's case* (2) as to the interpretation to be placed on procedural law were totally ignored as well as the rule that it is not in every case that non-compliance with the provisions of Order 32, rule 3 makes a decree null and void. The object of Order 32 is to see that no decrees are passed against minors where they are not effectively represented. I have deliberately used the words 'effectively represented' in contradistinction to the 'representation' contemplated by Order 32, rule 3. If a minor is represented by a guardian ad-litem and the interests of the other major defendants are identical with him and those defendants are effectively prosecuting the litigation it can hardly be said that a minor is not effectively represented. Too much insistence on technical provisions of a procedural law can at time lead to absurd results and cause injustice to parties. It is only where a Court comes to the conclusion that the minor was not effectively represented and thus he was in fact not a party to the proceedings that the result envisaged by the learned Judges would necessarily follow. But where the minor is effectively represented, though technically not in line with the provisions of Order 32, rule 3, the said result will necessarily not follow.

(14) In *Ramchandra Pd. Singh's case* (7), the facts are that there was no notice to the proposed guardian. Moreover, the natural guardian was also ignored. There was no other party who could have effectively protected the interest of the minor. Therefore, this decision is of no assistance so far as the present case is concerned.

(15) In *Nirmal Chandra Ray's case* (8), the following propositions were laid:—

(1) Where a proper person had been appointed, with the sanction of the Court and in compliance with the mandatory provisions of law, to act as guardian-ad-litem in a suit, the decree passed in such suit cannot be challenged on the ground of a mere irregularity in the matter of appointment of such person as guardian-ad-litem, not causing any prejudice, such as the absence of a formal order of appointment by reason of the doctrine of effective representation.

(2) The foregoing doctrine has no application where the Court has not considered any proposal for the appointment of a guardian-ad-litem.

(3) The provisions of sub-rule (4) of Rule 3 and sub-rule (3) of Rule 4 of Order 32, are mandatory and a decree obtained against a minor in complete disregard of these provisions is without jurisdiction and void *ab initio.*

Banerjee J., one of the learned Judges constituting the Bench, further observed:—

"(16) The doctrine of substantial representation is a matter of substance and not of form. Where a minor was effectively represented in a suit by a guardian, although not formally appointed, and suffered no prejudice on account of the informality, the absence of a formal order of appointment of guardian is not fatal to the suit."

This decision shows that it is only where a minor is not at all represented, in fact or in law, that the decision rendered against him will be void. But where there is substantial representation of the minor the decision will not become void, unless the minor has suffered prejudice by non-compliance of the provisions of Order 32, rule 3.

(17) In *Govindan's case* (9), it was observed that "the failure to appoint the natural guardians of the minors as guardians ad-litem is not a mere irregularity in procedure". In this case, no attempt was made to appoint the legal guardians as guardians-ad-litem. Straightaway a Court guardian was appointed. This case is, therefore, distinguishable.

(18) In *Inder Pal Singh's case* (10), the question was not that the appointment of the guardian was not in accordance with the provisions of Order 32, rule 3, but the guardian did not properly represent the minor in the suit. It was a case of negligence of the guardian and after relying on *Dwarika Halwai* v. *Sitla Prasad* (18) wherein it is laid down:—

"Even where there was an order appointing a person as guardian, if that guardian did not properly represent the minor, the decree would not be binding on the minor. Such a decree would be void ab initio and not merely voidable,"

(18) A.I.R. 1940 All. 256.

it was held:—

> "The case law is thus quite clear that a decree against a minor is void *ab initio* and a nullity, if it is passed in a suit in which no guardian of the minor is appointed or the appointment of the guardian is invalid or the validly appointed guardian does not properly represent the minor. The proposition of law laid down by the lower Court is, therefore, incorrect."

(19) In *Rangammal's case* (11), the observations of Banerjee J., in *Nirmal Chandra Ray's case* (8) (supra) were approved. These observations go contrary to the contention advanced by the learned counsel for which this authority has been cited.

(20) Now, I proceed to deal with cases cited by the learned counsel for the respondents. In *Ramaswami Chetty* v. *Doraisami Chetty* (19), no notice was given to the father and a Court guardian was appointed. The father was himself a party to the litigation and it was held that the absence of notice to the father of the appointment of the head clerk would only be an irregularity which would not affect the validity of the proceedings in the absence of proof of fraud or gross negligence on the part of the person appointed as guardian.

(21) In *Kumara Kangaya 'Goundar* v. *Arumugha Goundar* (20) the observations made in *Ramaswami Chetty's case* (19) (supra) were approved.

(22) In *Kidambi Ritumalacharyulu* v. *Amisetti Venkiah* (21), Mr. Justice Wallace observed as follows:—

> "No irregularity by way of an omission to send a notice as required by Order XXXII, rule 3 of the Civil Procedure Code, can operate to render void the presumed representation of minor defendants in a suit, unless such omission has in fact prejudiced their defence, and such prejudice is not a matter of assumption or presumption but of proof.

(19) A.I.R. 1923 Mad. 465.
(20) A.I.R. 1970 Mad. 179.
(21) 80 I.A. 541.

The question as to whether the omission has in fact prejudiced the defence will depend on the further question whether the minors had a good defence and whether the omission to obey the rules and the appointment of a Court guardian, had the effect of shutting out that defence."

(23) In *Ram Rekha Singh* v. *Ganga Prasad Mukaraddhwaj* (22), it was observed:—

"Assuming that there have been such irregularities in the appointment of the guardian ad-litem in the previous suit as to entitle the plaintiffs to re-open the question, they cannot by merely showing irregularities succeed unless they can satisfy the Court that they have been prejudiced and have been deprived of some good defence which was open to them."

(24) After going through the case law cited before me, I have come to the conclusion that each case must be settled on its own facts and it would not be appropriate to lay down any general rule. The crux of the matter is that it has to be seen whether the minor was effectively represented in the litigation. If he was, then the non-compliance with the provisions of Order 32, rule 3, which are mandatory, would not render the decision void. But if the non-compliance has caused prejudice to the minor or he was not effectively represented, the decision will be void, i.e., the minor can either ignore it or avoid it. This approach is in consonance with justice because where the matter has been properly contested and no prejudice has been caused to the minor, it will be sheer injustice to the other side to re-open the matter again. Litigation is a very expensive affair and the general principle of law is that it should not be encouraged. In this view of the matter, so far as the facts of the present case are concerned, there can be no two opinions that the minors were effectively represented and no prejudice has been caused to them. Their interests were effectively safeguarded by their brothers, who were co-defendants with them and whose interests were identical. They contested the suit on all conceivable grounds. The learned counsel for the minors has been unable to bring to our notice any evidence or any contention which would enable us to hold that a wrong decree was obtained.

(22) A.I.R. 1926 All. 545 (F.B.).

(25) For the reasons recorded above, this appeal fails and is dismissed. There will be no order as to costs.

NARULA, J.—I agree.

PATTAR, J.—I agree.

K. S. K.

FULL BENCH

Before R. S. Narula, A. D. Koshal and S. S. Sandhawalia, JJ,

JAGJIT MOHAN SINGH BHALLA, ETC.—*Appellants.*

versus

UNION OF INDIA ETC.,—*Respondents.*

Letters Patent Appeal No. 255 of 1972

May 6, 1974.

Constitution of India (1950)—*Articles* 14 *and* 16—*Competent authority sanctioning revised scale of pay of a class of Government officers from a particular date—Rider attached depriving the officers the benefit of the revised scale from the date of sanction—Such rider—Whether hit by Articles* 14 *and* 16 *of the Constitution—Invalid part of the order severable—Whether can be struck down keeping the valid part intact.*

Held, that once an order fixing higher salary or a higher scale of pay is passed by the competent authority, it confers on the person covered by the order a legal right to claim and recover such salary. Where a competent authority sanctions a revised scale of higher pay to a class of government officers with effect from a particular date, but attaches a rider, without any justification, depriving those officers only, of the benefits of recovering the arrears of pay at that higher rate from the date from which the revised scale is enforced, such a rider suffers from invidous discrimination and is hit by Articles 14 and 16 of Constitution of India. The question of either accepting the offer of revised scale as a whole or rejecting it out of hand does not arise in a case where statutory sanction is granted by a competent constitutional authority. If an attack is made against the constitutionality of any part of the sanctioning order, it has to be adjudicated upon and struck down when found unconstitutional. In case the part