

Sukh Lal Singh
and another
v.
Joginder Singh
and another

Dulaj, J.

or varied, that may of course be done, but obviously in the present case no second decision could have been lawfully made so long as the previous decision deemed to have been made under the new enactment was in existence. It seems to me, in the circumstances, that whether we consider merely the saving clause without the second proviso, or whether we consider it along with the second proviso, the intended result is the same, and it is that previous decisions made between the parties under the previous law are not to be disturbed merely because of the extension of a new enactment to the Pepsu territory. There is no indication in the statute that previous decisions could be ignored. I would, therefore, hold that the rent of the disputed shop having been fixed under a valid law in 1953, the same matter could not have been reopened by the Rent Controller under the new enactment and, in the result, I would allow the present petition and set aside the order fixing the fair rent afresh. In all the circumstances, however, I would leave the parties to their own costs throughout.

D. K. MAHAJAN, J.—I agree.
B.R.T.

APPELLATE CIVIL

Before Mehar Singh and Shamsheer Bahadur, JJ.

RAGHBIR SINGH,—Appellant

versus

SMT. GIAN DEVI AND ANOTHER,—Respondents

Regular Second Appeal No. 754 of 1954

1962

July, 24th

Specific Relief Act (I of 1977)—S. 14—Minor obtaining loan by misrepresenting himself as major—Whether bound to restore amount in equity—Plea as to restitution—Whether should be taken in the form of attack or as a shield in defence.

Held, that a minor, who by falsely representing himself to be a major has induced a person to enter into a contract, is not estopped from pleading his minority to avoid the contract. But a minor, though not liable under the contract, may, in equity, be required to return the benefit he has received by making a false representation as to his age. "The equitable jurisdiction is founded upon the desire of the Court to do justice to both the parties by restoring them to the *status quo ante*, and there is no real difference between restoring the property and refunding the money, except that the property can be identified but cash cannot be traced." The minor who has been instrumental in bringing about a void contract is liable for restitution by payment of compensation, having regard to the principle embodied in section 41 of the Specific Relief Act, 1877. It matters not whether the plea is taken in the form of an attack or as a shield in defence for the granting of an equitable remedy does not depend upon a mere accident, namely, whether it is the minor or his adversary who has taken the initiative in bringing the transaction before the Court.

Case referred by Hon'ble Mr. Justice Mehar Singh on 30th April, 1960, to a larger Bench owing to the conflict of judicial opinion on the question of law involved in the Case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Shamsher Bahadur, on 24th July, 1962.

Second appeal from the decree of the Court of Shri Harbans Singh, District Judge, Ludhiana, dated the 30th day of April, 1954, reversing that of Shri Raj Inder Singh, Senior Sub-Judge, Ludhiana, dated the 18th March, 1953, and dismissing the plaintiff's suit and leaving the parties to bear their own costs throughout.

ROOP CHAND, ADVOCATE, for the Appellant.

RAJ KUMAR, ADVOCATE, for the Respondent.

JUDGMENT

SHAMSHER BAHADUR, J.—There being a conflict of judicial authority on the question whether

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a minor obtaining a loan by misrepresenting himself as a major is bound to restore the amount in equity, between two Full Benches, one of the Lahore High Court in *Khan Gul, v. Lakha Singh* (1), and the other of the Allahabad High Court in *Ajudhia Prasad v. Chandan Lal*, (2), the case has been referred by my brother Mehar Singh J. for decision by a larger Bench.

The indisputable facts which have been stated in the referring order may briefly be recapitulated. On January 29, 1949, Nathu Ram and Raj Pal minor, obtained an excise contract for the retail sale of opium and poppy-heads at Samrala. Some defaults having occurred, Raj Pal, who was then a minor, represented to the appellant Raghubir Singh, that he was a major and also produced a medical certificate to support his statement. Raghubir Singh was induced to make a loan of Rs. 1,400 to enable Raj Pal and his partner Nathu Ram to discharge their liability for payment of an instalment. A promissory note (Exhibit P. 1), and also an agreement (Exhibit P. 3), were executed by Raj Pal for the return of the sum of Rs. 1,400 given on loan by Raghubir Singh appellant. Having obtained this amount, Raj Pal and his partner were able to make the deposit of the instalment due from them. The minor, Raj Pal, having failed to discharge his obligation the plaintiff brought a suit for recovery of a sum of Rs. 1,400 on basis of the promissory note (Exhibit P. 1), with interest at the rate of 12 per cent per annum. In defence, Raj Pal pleaded minority. Before the suit was decreed by the trial Court, Raj Pal died and was subsequently represented by his mother Gian Devi and his minor brother Jinder. Gian Devi preferred an appeal to the District Judge, who allowed the appeal. The second appeal to

(1) I.L.R. 9 Lah. 701.
(2) A.I.R., 1937 All. 610.

this Court came in the first instance before Grover J., who remanded the case to the trial Court for further inquiry on two points:—

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“(1) Whether Nathu Ram, or Shadi Singh, were partners with Raj Pal; and

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(2) Whether Rs. 1,400 had been deposited in the treasury by Raghubir Singh, plaintiff on behalf of Raj Pal, alone or Raj Pal and his partner or partners?”

The trial Judge reported and the learned District Judge has agreed with him that Nathu Ram was a partner in the contract with Raj Pal from the very inception of the partnership and Shadi Singh, became a partner only for a short time. The District Judge has further found that the sum of Rs. 1,400 was deposited in the treasury at the instance of and for Raj Pal. On the second finding the District Judge has reported that the sum of Rs. 1,400 ought to be restored by way of restitution on the principle enunciated by the Full Bench of the Lahore High Court in *Khan Gul v. Lakha Singh*, (1). This matter was heard by Mehar Singh, J., on 29th of April, 1960, and the conflict of judicial authority having been brought to his notice the matter has been referred for decision to this Bench.

The case of *Khan Gul v. Lakha Singh* (1), came before a Full Bench presided over by Chief Justice Sir Shadi Lal, and of which Broadway, Harrison, Tek Chand and Dalip Singh, JJ., were the other members. On a review of the case law, Sir Shadi Lal, in the leading judgment of the Court came to the conclusion that a minor who by falsely representing himself to be a major has induced a person to enter into a contract, is not estopped from pleading his minority to avoid the contract. On the other question referred to it the Full Bench, (Harrison J., dissenting) reached the conclusion

Raghubir Singh that "an infant, though not liable under the contract, may, in equity, be required to return the benefit he has received by making a false representation as to his age". In the words of Sir Shadi Lal, at page 715: "The equitable jurisdiction is founded upon the desire of the Court to do justice to both the parties by restoring them to the *status quo ante*, and there is no real difference between restoring the property and refunding the money, except that the property can be identified, but cash cannot be traced." The learned Chief Justice derived support for this conclusion from the principle embodied in section 41 of the Specific Relief Act, which empowers a Court to require a party seeking cancellation of an instrument to make any compensation to the other which justice may require. If an infant borrows a sum by making false representation and thereafter executes a pronote for this amount, the document would stand cancelled being a void instrument, but restitution is to be made under section 41 of the Specific Relief Act. It is true that there is no specific prayer for cancellation of the pronote in the present case, but in pith and substance that is the plea which has been taken by the respondent. It matters not whether the plea is taken in the form of an attack or as a shield in defence. The minor truly speaking on his own showing has been instrumental in bringing about a void contract and ought to be liable for restitution by payment of compensation. In *Khan Gul's* case, the plaintiffs had asked for delivery of possession of property or in the alternative for a decree of Rs. 17,500, the consideration money, which had been paid to defendant No. 1, who in a suit brought against him pleaded minority. The suit was decreed. Sir Shadi Lal, discussed the conflicting authorities of *Leslie, Ltd. v. Sheill*, (3), 607, and *Stocks v. Wilson*, (4), and

(3) (1914) 3 K.B. 607.

(4) (1913) 2 K.B. 235.

reiterated the principle that a person should not be allowed to take advantage of his own fraud. In his words, "it would be sheer injustice if an infant would retain, not only the property which he has agreed to sell or mortgage, but also the money which he has obtained by perpetrating fraud." Chief Justice Sir Shadi Lal, rejected the distinction which has been created in the English authorities that the protection given by law to the infant "was to be used as a shield and not as a sword"—(vide Lord Kenyon in *Jennings v. Rundall*, (5). The granting of an equitable remedy should not depend upon a mere accident, namely, whether it is the minor or his adversary, who has taken the initiative in bringing the transaction before the Court.

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The principle of law enunciated in the Full Bench of the Lahore High Court has come to be accepted by various Courts in India. In a subsequent Division Bench of the Lahore High Court (Tek Chand and Hilton JJ.) in *Budha Singh v. Lakhmi Chand*, (6), this principle was re-affirmed. Edgley J., of the Calcutta High Court in *Manmatha Kumar Shaha v. Exchange Loan Company Ltd.*, (7), following the decision in *Khan Gul's* case held that the Court has a discretion in equity to direct the minor to return the benefit he has received by false representation to the person he has deceived. In this authority, there is an extensive discussion of both the Indian and the English law on the subject. Malimath, J., of the Mysore High Court in *Dyaviah and another v. Shivamma and another*, (8), observed that section 41 of the Specific Relief Act, is not only applicable to cases where an instrument is specifically got cancelled under the provisions of section 39 of the Act, but also to transactions where they were void *ab initio* and

(5) 4 R.R. 680,

(6) I.L.R. 11 Lah. 167.

(7) I.L.R. 1937 Cal. 283,

(8) A.I.R. 1959 Mysore 188,

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needed no cancellation of any instrument. The learned Judge specially discussed the case of restitution by a minor, who cannot be allowed to retain the benefit he has secured under the very contract which he seeks to set aside. Such conferment of a double advantage should be avoided so far as it is possible.

The discordant note was struck by the Allahabad High Court in the Full Bench decision of Chief Justice Sulaiman, Thom and Bennet JJ., in *Ajudhia Prasad v. Chandan Lal*. (2). As stated in the judgment of the Court, delivered by Chief Justice Sulaiman, as a minor cannot be estopped from pleading that a contract is void on ground of minority, an infant is not liable on a contract which is induced by false representation about his age." The Full Bench was persuaded to take this view on a consideration of the decision of the Court of Appeal in *Leslie Ltd., v. Sheill* (3) and it was observed that a new rule of equity cannot be invented by an Indian Court for the first time contrary to the principles of the English Law. In the words of Chief Justice Sulaiman: "If the law in England is clear and there is no statutory enactment to the contrary in India, one should hesitate to introduce any supposed rule of equity in conflict with that law." In *Leslie Ltd., v. Sheill*, the plaintiffs, who were a firm of registered money-lenders, had sued the defendant to whom they had made two advances on the ground that these advances had been obtained by fraudulent representation by the defendant about his full age. Though Norridge J., decreed the suit of the plaintiffs, this judgment was set aside by the Court of Appeal. The basis of decision, as stated by Lord Summer at page 619 was this:—

"There is no question of tracing it, no possibility of restoring the very thing got by

the fraud, nothing, but compulsion through a personal judgment to pay an equivalent sum out of his present or future resources, in a word nothing, but a judgment in debt to repay the loan. I think this would be nothing, but enforcing a void contract. So far as I can find, the Court of Chancery never would have enforced any liability under circumstances like the present, any more than a Court of law would have done so,”

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The cause of action was in substance *ex contractu* and in the opinion of the Court of Appeal the plea of infancy was a good answer to the action, and that the defendant was under no equitable liability to the plaintiffs. This rule of the English law cannot be fully applicable to this country where section 41 of the Specific Relief Act provides relief in cases of this nature. It would be pertinent to observe that in Halsbury's Laws of England (Lord Simonds edition), Volume 21, at page 148, the position of English law now is stated to be in these terms:—

“Where an infant has obtained an advantage by falsely stating himself to be of full age, he is bound in equity to restore property so acquired and to release persons whom he has deceived from obligations induced by the fraud.”

On a review of these authorities, I do not feel persuaded to depart from the salutary principles enunciated by so great master of law as Sir Shadi Lal in *Khan Gul v. Lakha Singh* (1), and being in respectful agreement with his views I do not think that this case calls for any re-consideration. In the result, this appeal must be allowed. The

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plaintiff, however, in my opinion, is entitled to no more than the principal amount, that it to say, Rs. 1,400 and a decree for this amount should be passed in his favour. The plaintiff would be entitled to interest at the rate of 4 per cent per annum from the date of the suit till realisation. The parties would bear their own costs.

MEHAR SINGH, J.—I agree.

REVISIONAL CIVIL

Before S. S. Dulat, A.C.J., and D. K. Mahajan, J.

GOBIND RAM,—Petitioner.

versus

TAKHAT MAL AND ANOTHER,—Respondents.

Civil Revision No. 395 of 1961.

1962
July, 31st.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Rent Controller—Whether can evict tenants of transferred properties provided in S. 29 of Displaced Persons (Compensation and Rehabilitation) Act, XLIV of 1954.

Held, that the tenants occupying urban property can be evicted only by the Rent Controller acting under section 13 of the East Punjab Urban Rent Restriction Act. The grounds of eviction are mentioned in that Act. Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act confers the legal status of a tenant on certain persons like the allottees in the present cases, but it further provides that for a limited period of time the grounds of eviction would be only those mentioned in that section. It follows that after the expiry of that period the grounds of eviction would remain what section 13 of the East Punjab Urban Rent Restriction Act mentions. The jurisdiction is throughout that of the Rent Controller.

Case referred by Hon'ble Mr. Justice Dulat, on 25th January, 1962 to a larger Bench for decision of common question of jurisdiction involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice D. K. Mahajan, on 31st July, 1962.