

(2017) 04 BOM CK 0002

In the Bombay High Court

Case No : Appeal No. 947 of 2003 in Summons For Judgment No. 413 of 2001 in Suit No. 4228 of 2000

Allahabad Bank

APPELLANT

Vs

M/s. Divya International L.I.C.

RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3

Citation : (2017) 3 AIRBomR 488 : (2017) 3 BCR 281

Hon'ble Judges : Anoop V. Mohta and P.R. Bora, JJ.

Bench : Division Bench

Advocate : Mr. Bhavik Manek i/by V.N. Ajitkumar, Advocates, for the Appellant; Mr. Vivek Walavalkar a/w Mr. Hemang Engineer, Ms. Karishma Shirke i/by Gordhandas and Fozdar, Advocates, for the Respondent No. 1; Ms. Shaila M. Joshi i/by J.B. Basu and S.M. Joshi, Advocates, for the Respondent No. 4

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Being aggrieved and dissatisfied by Judgment and Order dated 13 January 2003, passed by the learned Single Judge in Summons for Judgment No. 413 of 2001 in Suit No. 4228 of 2000, the Appellant Original Defendant No.1 has filed the present Appeal and thereby prayed to quash and set aside the impugned order.

2. In nutshell, the facts and events of the case are as under:

The Appellant Bank is original Defendant No.1. Respondent Nos. 2, 3 and 5 are the partners of Respondent No.1 company. Respondent No.1's Associate company M/s. Kilitch Drugs (I) Ltd., had entered into an agreement with the firm of M/s. ALSafwa managed by Respondent Nos. 2, 3 and 5 for mechanical electrical pumping. Respondent Nos. 2 and 3 are also Directors of M/s. Kilitch Drugs (I) Ltd.. Respondent No.1 was appointed as subcontractor to carry out the said work of the factory building at Dubai for M/s. ALSafwa by M/s. Kilitch Drugs (I) Ltd.. Respondent No.1 had given a sub contract to Respondent No.4 for

electrification of the factory building. Respondent No.1 company was dissolved by order of Dubai Court. In view of certain disputes, the contract assigned to Respondent No.1 was directly transferred to Respondent No.4 and letter was addressed to record the same. The Bank Guarantee given for Respondent No.4 was also confirmed to be transferred by M/s. ALSafwa Drugs. As Plaintiff No.1 suspended entire business activities, M/s. ALSafwa Drugs agreed to get the electrical work done by Respondent No.4 directly, and further to execute contract between M/s. ALSafwa and Respondent No.4, as all the work of Respondent No.1 was suspended as it was dissolved by the order of Dubai Court. Respondent No.1 invoked the bank guarantee and filed the Suit for recovery.

3. On 22 February 1999, Respondent No.4 entered into the contract agreement with Respondent No.1, who was a contractor of M/s. ALSafwa Drugs, Dubai, whereby it subcontracted to Respondent No.4 to carry out for mechanical, electrical and Plumbing work in the factory building at Dubai for M/s ALSafwa Drugs, Dubai. As per the Agreement, Respondent No.1 was to pay Respondent No.4 amount of Rs.16 lakhs as advance payment and Respondent No.4 was to execute a Bank Guarantee of the like amount in favour of Respondent No.1. On 4 March 1999, the Appellant Bank issued Bank Guarantee bearing No. 60/6 in favour of Respondent No.1, which was valid upto 25 August 1999 and later on extended till 16 February 2000. Due to some disputes, it was decided that the contract of carrying out the work in the factory building would be transferred directly to Respondent No.4 from Respondent No.1. Therefore, on 15 November 1999, a letter was issued by Respondent No.2 on behalf of Respondent No.1 to M/s. ALSafwa Drugs FZE (Principal), relieving Respondent No.4 (Subcontractor) from the Contract Agreement with Respondent No.1 and thereby enclosing Bank Guarantee for completion of electrical works. On 30 November 1999, ALSafwa Drugs FZE issued a letter to Appellant Bank informing about the termination of the contract. They have appointed Respondent No. 4 directly to complete the electrification and also agreed to send the Bank Guarantee to the Appellant, upon receipt of the same from Respondent No.1. During the period from 22 November 1999 to 1 December 1999, Respondent No.4 issued letters to the Appellant Bank informing about the change in contract and asked to cancel and/or revoke the Bank Guarantee. The Appellant Bank replied the same by letter dated 24 November 1999 and asked for further details. Respondent No. 2 by his letter dated 18 December 1999, informed to M/s. ALSafwa, stating that he along with wife and son left for India due to sudden illness of mother and on 19 December 1999, allegedly claimed to be authorised signatory of Respondent No.1, issued a letter to the Appellant Bank and invoked the Bank Guarantee. By suspecting foul play on the part of Respondent Nos. 2 and 3, the Appellant Bank informed Respondent No.4 about the letter of invocation. On 21 December 1999, the Appellant Bank received a letter on behalf of Respondent No.1 through Respondent No. 5, stating that the Bank Guarantee was not handed over to ALSafwa Drugs, but illegally submitted to the Bank for invocation, therefore, requested not to be invoked. On 23 December 1999, the Appellant Bank

informed to Respondent No.1 that they agreed to honour its commitments under the subject bank guarantee to the beneficiary name therein. However, the Appellant Bank called upon Respondent No.1 to verify the authenticity of address mentioned in the letter of invocation, as well as, informed about the receipt of letter dated 21 December 1999 issued by Respondent No.1 through Respondent No.5 to cancel the Bank Guarantee. Attention of Respondent No. 5 was specifically drawn to letter dated 15 November 1999 addressed to M/s. ALSafwa Drugs, FZE Dubai through Respondent No.2 and hence forwarded copies of the above letters and other papers received by the Appellant to Respondent No.1 to clarify its position for taking appropriate action.

4. Respondent No.2 on behalf of Respondent No.1 issued a letter dated 25 December 1999 to the Appellant Bank stating that the normal operations at Dubai has been temporarily suspended except the banking transaction at Bank of Baroda, Bur Branch, Dubai. Further, Respondent No.2 stated that all correspondences shall be communicated to Indian office at Worli. On 27 December 1999, the Appellant Bank again forwarded copies of the earlier letters/ correspondences to Respondent No. 2. On 29 December 1999, the Appellant Bank has received letter from Respondent No.1 requesting it to cancel Bank Guarantee as the same was invoked by minor partners without their consent. It has been further stated that they are taking steps to dissolve Respondent No.1, including cancellation of signature of Respondent Nos. 2 and 3 in Bank of Baroda from operating the account. On 31 December 1999, Respondent Nos. 2 and 3 issued legal notice to the Appellant Bank, calling upon to remit the Guarantee amount to Bank of Baroda at Bur Branch, Dubai. On 1 January 2000, Respondent No. 2 replied on behalf of Respondent No.1 to the Appellant Bank's letter dated 27 December 1999, stating that the address of Respondent No. 1 has changed. Further under the articles of Memorandum of Respondent No.1, only Respondent Nos. 2 and 3 were vested with the management of Respondent No.1. Though Respondent Nos. 2 and 3 referred to letter dated 15 November 1999 stated that M/s. ALSafwa did not accept advance, as Bank Guarantee was not submitted, hence they became entitled to invoke. In this letter Respondent Nos. 2 and 3 stated that Respondent No. 5 did not have any right to cancel the Bank Guarantee. On 2 January 2000, letter issued by Respondent No. 5 to the Appellant Bank stating that Bank Guarantee to be honoured only if signed by all the partners and that the only address being as mentioned on the letterhead.

Further, minor partners Respondent Nos. 2 and 3 without intimation left for India and that they have initiated steps to dissolve Respondent No.1 company as per laws of Dubai. On 3 January 2000, a letter issued by Respondent No.4 to the Appellant Bank stating that invocation of the bank guarantee by Respondent Nos. 2 and 3 illegal and wrongful and bank justified in withholding the payment under the guarantee. On 4 January 2000, two letters issued by Respondent No. 1 through Respondent No.5 to the Manager, Bank of Baroda, Dubai, UAE branch, stating that Respondent Nos. 2 and 3 left for India and unlikely to return to Dubai. By this letter Respondent No.5 called upon the Bank of Baroda, Dubai

Branch, not to accept any instructions from Respondent Nos. 2 and 3 without signature of Respondent No. 5, else the bank shall be liable for damages. On 12 January 2000, the Appellant bank replied to notice dated 31 December 1999, issued by Respondent No. 2 stating that the Bank is ready and willing to make the Guarantee payment subject to give clear mandate from all the three partners concerned, since there was a dispute and bank receiving contrary instructions from the Respondents. During the period from January 2000 to April 2000, correspondence exchanged between the parties with regard to serious disputes between Respondent Nos. 1 to 3 and 5 and instructions to the Appellant Bank not to honour the payment thereunder.

5. By order dated 22 August 2000, Dubai Court of First Instance, dissolved Respondent No.1 company and appointed the authorised person to execute the dissolution order and also appointed Legal Authority to execute the Court order within a week as per the Commercial Company Act, Dubai. On 5 September 2000, Summary Suit No. 4228 of 2000 filed by Respondent Nos. 1 to 3 against Appellant Bank and others, when Respondent No.1 company was under liquidation. In view of the dissolution order of the Dubai Court, Respondent No.1 had no independent right to file the Suit. On 17 October 2000, notice was issued by Respondent No.5 to Bank of Baroda, Bur Branch, Dubai informing about dissolution of Respondent No. 1 company and requested to cancel the operation of accounts through Mehta Brothers (minor partners). On 3 April 2001, Summons for Judgment No. 413 of 2001 taken out by Respondent Nos. 1 to 3 in the above Suit. On 20 April 2001, affidavit in reply filed by the Appellant Bank and opposed Summons for Judgment on the grounds that; (i) no jurisdiction to decide the Suit in India, as the payment shall be made in Dubai, (ii) Respondent No. 1 was dissolved on 22 August 2000, as per Dubai Court order, therefore, Respondent Nos. 2 and 3 have no right to represent on behalf of Respondent No. 1 company as the Liquidator was appointed, (iii) By letter dated 15 November 1999, the contract for which the Bank Guarantee came to be issued has itself being released by Respondent No. 1 through Respondent No.2 and Respondent No. 4 has been directly appointed by M/s. ALSafwa to carry out the work, (iv) Furthermore, by letter dated 21 December 1999, the Bank Guarantee has been cancelled by Respondent No.1 through majority shareholders.

6. In a Memorandum of Association of Respondent No.1 dated 16 January 1999, particularly at Article 16 (Dispute) clearly mentioned that in case of any dispute or difference between the parties or Agreement, the Abudabi Court shall have jurisdiction to decide the same. As per Clause 16 of the Agreement for Establishment of Limited Liability company, in case of any dispute arises, it has been clearly mentioned, the jurisdiction shall be in the Court of Dubai. Therefore, Indian Court does not have jurisdiction to entertain any proceedings in this regard.

7. On 29 November 2002, affidavit in reply filed by Respondent No.4 supporting the Appellant Bank and producing additional documents to show that the Bank

Guarantee is not enforceable. On 8 January 2003, affidavit in rejoinder filed by Respondent Nos. 2 and 3 on behalf of Respondent No.1 to the affidavit in reply filed by the Appellant Bank.

8. By impugned order dated 13 January 2003, the Suit has been decreed in terms of prayer clauses (a) and (b). On 4 June 2003, the present Appeal was filed by the Appellant Bank, challenging the impugned order. On 20 January 2004, the Appeal has been admitted. On 26 September 2006, this Court directed the Bank to deposit decretal amount with interest within four weeks. Liberty is also granted to Respondent Nos. 1 to 3 to withdraw subject submission of Bank of Guarantee. On 23 November 2006, the Appellant Bank deposited a sum of Rs. 37,03,452/in this Court, which appears to have been withdrawn by Respondent No. 1 by furnishing Bank Guarantee. Hence, the present Appeal challenging impugned order dated 13 January 2003, passed by the learned Single Judge.

9. The learned counsel appearing for the Appellant read and referred the following Judgments

a) Babu Rao Ramchandra Rao & Ors. v. Babu Manaklal Nehrmal AIR1938 Nag 413;

b) Mahanth Singh v. U Ba Yi AIR 1939 PC 110;

c) Nallore Cooperative Urban Bank Ltd. by its Secretary, Mr. V. Venkatappayya v. Akili Mallikarjunayya, AIR 1948 Mad 252;

d) Larsen and Toubro Limited v. Allahabad Bank & Ors. 2016 (6) Bom. C.R. 335;

e) IDBI Trusteeship Services Ltd. v. Hubtown Ltd. AIR 2016 SC 5321 : (2016) 8 MLJ 390;

f) Sudarsan Chits (I) Ltd. v. G. Sukumaran Pillai & Ors. AIR 1984 SC 1579

10. The learned counsel appearing for Respondent No.1 read and referred the following Judgments

a) Oil & Natural Gas Corporation Ltd. v. SBI, Overseas Branch, Bombay (2000) 6 SCC 385;

b) Mahatma Gandhi Sahakara Sakkare Karkhane v. National Heavy Engg. Coop. Ltd. & Anr.(2007) 6 SCC 470;

c) M/s. Adani Agri Fresh Ltd. v. Mahaboob Sharif & Ors.Civil Appeal No. 14015 of 2015 (Arising out of SLP (C) No.9506/2014 dated 2/12/2015

11. The law with regard to the scope and purpose of Summary Suit under Order 37 of the Code of Civil Procedure, 1908 (CPC), has been reiterated in the Judgments cited by the parties and ultimately, following are the basic principles/ points, which required to be kept in mind while passing the order on merits in such Summary Suits, covering the aspect of grant of unconditional and/or conditional leave.

12. This Court (Coram: Anoop V. Mohta,) in IAL Logistics India [A Division of IAL Container Line (India) Ltd. v. Quantum International 2011 (5) Mh.L.J. 931, while dealing with the scheme and object of Order 37 of the CPC, has observed in paragraph No.10 that:

"10. The scheme and purpose of Order 37 of the Code of Civil Procedure (CPC) can be summarised as under:

The purpose and the basic of summary suit:

(a) A plaintiff, if chooses to invoke the provisions of Order 37 for recovery of amount, the basic obligations and elements as required need to be fulfilled. The summary suit so filed must fall within the four corner of Order 37 for getting judgment/decreed summarily.

(b) As per Rule 227 of the Bombay High Court (Original Side) Rules, 1980, the plaintiff must take out an appropriate proceeding within six months once such Suit is instituted, though it is subject to condonation of delay, if case is made out.

(c) The object of Order 37 is to recover the crystallised dues, liquidated, admitted, acknowledged debt/monetary claim by a summary procedure, without long trial, principally based upon a written document executed in the course of business, in accordance with law. It is a supportive measure for recovery of unpaid debt/amount covering all the negotiable instruments as contemplated under the Negotiable Instruments Act, apart from a valid, written contract/receipt/acknowledgement. It may be an express term or an implied term, based upon facts and circumstances of the case, considering the practise, trade and usage of the commerce and the trade. This also covers apart from principal amount, express or implied terms of the interest.

The plaintiff's and defendant's respective obligations:

(d) A plaintiff having once instituted a summary suit is under obligation firstly, to serve the defendant, a summons for appearance by providing copy of plaint and annexures. The defendant, upon such service, needs to appear within 10 days from the date of the service either in person or through an Advocate. If the appearance is made, either in person or through the Advocate, the plaintiff is required to serve the summons for judgment on the given address.

(e) The defendant is entitled to file a reply and/or an application for grant of leave to defend the Suit, within 10 days of service of summons with the averments and the supporting documents entitling him leave to defend the Suit. Such application or affidavit reply shall be supported by an affidavit.

(f) If the defendant fail to enter appearance in spite of the service, the plaintiff's averments/allegation, if supported by due documents/material, shall be deemed to be admitted and entitled for a judgment/decreed for the amount so prayed. The defendant though filed appearance but failed to file reply or defence or remained absent in spite of filing of service, the Court may pass judgment/decreed as

prayed in accordance with law.

The Court needs to exercise the discretion judicially:

(g) Though basic burden lies upon the plaintiff to prove and satisfy the Court that the claim so raised and prayed for decree falls within the ambit and scope of the summary procedure in question. Once the Court comes to a conclusion that plaintiff has made out a case for summons for judgment or the defendant has made out a case for unconditional or conditional leave, after considering the facts and circumstances of the case, need to exercise discretion in either way based upon the settled position of law.

(h) The defendant is able to demonstrate through the affidavit in defence and/or averments made in application/affidavit for leave to defend that the plaintiff has not made out a bona fide and clear case and on the contrary the defence so raised is bona fide reasonable and good defence and raises the plausible/triable issues the defendant is entitled to unconditional leave to defend.

(i) But, after the defence so raised by the defendant and the Court is satisfied that the defendant may at the trial able to establish a defence and/or there is material placed on record, though not fully supportive, the Court may grant conditional leave, directing the defendant to deposit the amount in the Court in full and/or in part and/or to furnish the security by possible permitted modes pending the trial.

The grant of Decree or Summons for Judgment with agreed interest:

(j) The Court, if, comes to a conclusion that there is no defence and/or it is sham, bogus, illusory and moonshine, the Court may refuse to grant leave to defend and pass/grant summons for judgment or decree as prayed by the plaintiff.

The Interest:

(k) The Court needs to consider the aspect of agreed rate of interest on the principal amount so claimed and the future interest also. The condition should be reasonable, practicable and not be onerous or burdensome:

The condition should be reasonable, practicable and not be onerous or burdensome:

(l) It is also necessary for the Court while exercising a jurisdiction to see that while granting leave to defend, contention should not be unduly onerous that results into depriving and/or unable to defend the defence so raised. The Court, therefore, needs to exercise discretion cautiously and carefully while passing the conditional or any such order in summary suits."

13. The Apex Court, recently in IDBI Trusteeship Services Ltd. (Supra), has observed in paragraph No. 17 that:

"17. Accordingly, the principles stated in paragraph 8 of Mechelec's case will now

stand superseded, given the amendment of Order 37, Rule 3 and the binding decision of four judges in Milkhiram's case, as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2 If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3 Even if the defendant raises triable issues, if a doubt is left with the trial judge about the defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5 If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6 If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court."

14. The Apex Court in, State Bank of Hyderabad v. Rabo Bank (2015) 10 SCC 521 in paragraph 17 and 18 has recorded as under, while granting unconditional leave to defend:

"17. An analysis of the above principles makes it clear that in cases where the defendant has raised a triable issue or a reasonable defence, the defendant is entitled to unconditional leave to defend. Leave is granted to defend even in cases where the defendant upon disclosing a fact, though lacks the defence but makes a positive impression that at the trial the defence would be established to the plaintiff's claim. Only in the cases where the defence set up is illusory or sham or practically moonshine, is the plaintiff entitled to leave to sign judgment.

18. Insofar as the question of maintainability of the suit in question under Order

37 CPC is concerned, this Court has in *Neebha Kapoori v. Jayantilal Khandwala* (2008) 3 SCC 770 : (2008) 1 SCC (Civ) 929 observed that where the applicability of Order 37 itself is in question, grant of leave to defend may be permissible. The court before passing a decree is entitled to take into consideration the consequences therefor. The courts dealing with summary trials should act very carefully taking note of the interests of both the parties. Merely on the ground that the defendant may resort to prolonged litigation by putting forth untenable and frivolous defences, grant of leave to defend cannot be declined. At the same time, the court must ensure that the defendant raises a real issue and not a sham one. The court cannot reject the defence on the ground of implausibility or inconsistency. Before recording a finding of granting leave to defend, the Court should assess the facts and come to the conclusion that if the facts alleged by the defendant in the affidavit are established, there would be a good or even a plausible defence on those facts."

15. In the case in hand, we are inclined to interfere with the order passed by the learned single Judge dated 13 January 2003, by accepting the case and submissions of the Appellant and the grounds so raised, which are undisputed on the findings and the facts so referred in the respective documents, which are part of the record.

16. This undisputed position on record itself makes the defence plausible and raises various issues, which required due trial. The learned Single Judge failed even to decide the issue of jurisdiction by giving specific reason to the defence so raised in the background of the disputes and differences between the parties and its partners.

17. The law of guarantee though cleared, but it is also necessary for the concerned Bank to verify and confirm the beneficiary and the amount to be paid in whose account and in whose instance, specifically in the background of disputes between the partners of the firm/company in question. The Banks are under obligation to verify the terms and conditions of the Bank Guarantee, if everything is same or not as per the terms. The issue and/or conflict, if any, based upon the correspondences entered into and/or referred and/or addressed by the parties to the Bank showing the reasons for not invoking the bank guarantee and/or same be cancelled and specifically when the concerned objector (Defendant No.3) was partner of the original Plaintiffs. The doubts, therefore, so raised by the Bank and asked for the clarification, in no way can be stated to be intentional and/or in breach of terms and conditions. It is clear that both the parties are under obligation to fulfil and complied with the formalities as per the terms. Any change and/or circumstances other than the terms and conditions, if cropped up, as happened in the matter, the Bank's action of not invoking the bank guarantee in case in hand and raising the defence, in no way, should be stated to be sham and bogus and/or intentional to deny the claim flowing from the bank guarantee. The undertaking given by Defendant No.1, Appellant to make the payment to Plaintiff No.1 in the facts and circumstances

for the reasons so recorded above and specifically, reference to communication dated 12 January 2000, 25 December 1999, 21 December 1999, 23 December 1999 and Bank Guarantee dated 4 March 1999, including the Dubai Court of first instance order dissolving the company, goes to the root therefore, impugned order dated 13 January 2003 required to be interfered with. We are doing accordingly. The defence and issues so raised by the Appellant original Defendant No.1, are not sham and bogus and/or intent to delay the payment. The substantial defence and triable issues are raised, which cannot be decided in such fashion, except in due trial.

18. Resultantly, the Appellant is entitled to an unconditional leave to defend the Suit. The Appellant original Defendant to file written statement within thirty days from the date of receipt of copy of this order. The Summons for Judgment is disposed of accordingly.

19. Pursuant to the order passed by this Court on furnishing the Bank Guarantee, Respondent Nos. 1 to 3 decree-holders, permitted to withdraw the amount by order dated 26 September 2006. However, in view of the above observations and the reasons so given, we are inclined to interfere with the impugned judgment and decree. The amount, therefore, so withdrawn by Respondent Nos. 1 to 3, required to be redeposited in the Court within six weeks with interest at the bank rate as of today. The liberty is granted to the Appellant to apply for appropriate order on this issue, including withdrawal of the amount from the Court account, if deposited.

20. Resultantly, the following order:

ORDER

- a) Appeal is allowed.
- b) Impugned order dated 13 January 2003, is quashed and set aside.
- c) Appellant is entitled for unconditional leave to defend the Suit.
- d) The Appellant Original Defendant to file written statement within thirty days from the receipt of copy of this order. Affidavit, list of documents to be filed within four weeks, thereafter. Inspection be made within four weeks, thereafter.
- e) The Suit be placed on the board of learned Judge, who is taking the commercial causes suits, as the same is transferred to the list of commercial causes.
- f) The amount withdrawn by Respondent No.1 to 3 be deposited in the Court within a period of six weeks with interest at the bank rate as of today. Liberty is granted to the Appellant to apply for withdrawal of the redeposited amount, with due notice to the parties.
- g) No costs.

21. This Judgment shall not take effect for six weeks from today, in the interest

of justice.