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English High Court dismisses US \$45 million fraud claim where proceedings already up and running in a Court in another jurisdiction

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Where a claimant has already issued related Court proceedings in another jurisdiction, the English Court is unlikely to be the appropriate forum for the trial of a claim, according to the recent High Court decision in *Punjab National Bank (International) Ltd v Srinivasan and others* [2019] UKHC 89 (Ch).



Facts

The Claimant, Punjab National Bank

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(International) Ltd ("**PNB**"), made several loans between 2011 and 2014 totalling \$45million relating to oil and energy projects in the USA.

PNB issued a claim in England against the various borrowers, alleging breaches of contract, fraudulent misrepresentation and deceit in relation to these loans.

All of the defendants were based in either India or the USA. Therefore, PNB applied to the English Court for permission to serve the claim on these defendants out of the jurisdiction.

PNB was originally granted permission by the Court. However, the defendants contested the order and the Court ruled that it be set aside, effectively dismissing PNB's claim in England.

Appropriate forum?

One of the main grounds the Court considered upon the defendants' application was that England could not be the appropriate forum for the claim.

In its response to the application, PNB pointed to various factors in support of English jurisdiction (it is where PNB is based, where the loans were negotiated, made and due for repayment). Some of the loans also contained non-exclusive English jurisdiction clauses, which can indicate a presumption of jurisdiction.

However, the Court ultimately concluded that all of these factors were overridden because PNB had already issued Court proceedings in the USA and India. The Judge found no good reason why the defendants should be concurrently sued in England for overlapping claims.

Further grounds for setting aside

Of importance to the judge's decision was that PNB had not properly informed the English Court about the existence of the USA and India claims when it initially sought permission to serve the claim on the defendants in India and the USA.

Litigants making a 'without notice' application (without notice to the other side), as is the case for an application to grant permission for service outside of the jurisdiction, must give full and frank disclosure to the Court of the circumstances surrounding the claim and the application. The Court concluded that PNB's failure to make this material disclosure was misleading and "*a serious breach of the claimant's duty to the court*", which would have been grounds alone for setting the permission aside.

And the Court also found that PNB had made extensive amendments to the Particulars of Claim after permission was granted. This meant the Particulars of Claim was not the same document the Court reviewed when granting permission. The Particulars of Claim that PNB served was therefore not within the scope of the order granting permission.

Comment

This case confirms the well-established rules relating to jurisdiction.

The guidance provided by the Court also has wider application, especially concerning further clarification of a claimant's obligation to make full and frank disclosure in such 'without notice' applications.

The Court also noted that it may set aside orders for permission to serve out of the jurisdiction if claimants do not refer their Particulars of Claim back to the Court following any significant amendments.

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