

A COMMISSIONER OF INCOME TAX, BOMBAY

v.

T.P. KUMARAN

AUGUST 16, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Code of Civil Procedure, 1908 : Section 11.

Explanation IV—Order 2, Rule 2.

C *Constructive res judicata—Income Tax Officer—Dismissal—Suit*
against—Suit decree and plaintiff reinstated in service—Writ for payment of
arrears—High Court order for payment of all arrears—Order attaining
finality—Subsequently application claiming interest allowed by Tribunal—Ap-
D *peal—Held Tribunal committed gross error of law in directing payment of*
interest—Held claim was barred by constructive res judicata—Even otherwise
as no claim was made in the suit the petitioner was prohibited to seek remedy
separately.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11399 of 1996.

E From the Judgment and Order dated 16.8.94 of the Central Administrative Tribunal, Ernakulam, in O.A. No. 2026 of 1993.

R.R. Misra, R. Satish and S.N. Terdol for the Appellant.

F E.M.S. Anam for the Respondent.

The following Order of the Court was delivered :

Leave granted.

G We have heard learned counsel for the parties.

This appeal by special leave arises against an order of the Central Administrative Tribunal, Ernakulam made on 16.8.1994 in OA No. 2026/93. The admitted position is that while the respondent was working as Income-tax Officer, he was dismissed from service. He laid a suit against the order
H of dismissal. The suit came to be decreed and he was consequently

reinstated. Since the arrears were not paid, he filed a writ petition in the High Court. The High Court by order dated August 16, 1982 directed the appellant to pay all the arrears. That order became final. Consequently, arrears came be paid. Then the respondent filed an OA claiming interest at 18% p.a. The Administrative Tribunal in the impugned order directed the payment of interest. Thus, this appeal by special leave.

The Tribunal has committed a gross error of law in directing the payment. The claim is barred by constructive *res judicata* under Section 11, Explanation IV, CPC which envisages that any matter which might and ought to have been made ground of defence or attack in a former suit, shall be deemed to have been a matter directly and substantially in issue in a subsequent suit. Hence when the claim was made on earlier occasion, he should have or might have sought and secured decree for interest. He did not seek so and, therefore, it operates as *re judicata*. Even otherwise, when he filed a suit and specifically did not claim the same, Order 2, Rule 2, CPC prohibits the petitioner to seek the remedy separately. In either event, the OA is not sustainable.

The appeal is accordingly allowed. No costs.

T.N.A.

Appeal allowed.