2026 INSC 1242

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
[ARISING OUT OF SLP (C) NO. 29916 OF 2024]

ASHOK KUMAR **...APPELLANT**

VERSUS

CENTRAL BANK OF INDIA & ORS. **...RESPONDENTS**

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

2. We have heard the appellant-in-person[1] and Mr. Gopal Jha, learned counsel, who was appointed *amicus curiae* to assist the Court. Mr. R. Basant, learned senior counsel appearing for the Central Bank of India[2] has also been heard.

3. Kumar challenges a judgment and order dated 9th May, 2024, passed by a Division Bench of the High Court of Punjab and Haryana at

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Reason:

[1] Kumar
[2] Bank

Chandigarh[3] dismissing his intra-court appeal[4] and, thereby, upholding dismissal of Kumar's miscellaneous application[5] in his writ petition[6].

4. The facts leading to this appeal, though tracing back nearly five decades, are not too complicated; however, the legal position has been obscured by Kumar's pursuit of overlapping remedies for the same relief.

5. Kumar, having joined the Bank on 1st March, 1969, was found to have defalcated certain amounts with fraudulent intent. He was placed under suspension by the Bank's competent authority on 22nd November, 1978. An FIR was registered on 24th November, 1978, under Sections 409, 420, 465, 468, 471, and 120B of the Indian Penal Code, 1860. Pursuant thereto, charges were framed against Kumar and three others. Upon trial, Kumar was acquitted on 15th July, 1983. Appeal/revision against such acquittal carried by the State and the Bank, respectively, came to be dismissed by the High Court on 27th May, 1991. Further proceedings not having been taken to this Court, Kumar's acquittal attained finality.

6. On 16th May, 1990, the Bank initiated departmental proceedings against Kumar by drawing up a charge-sheet. Kumar challenged such action in the earlier writ petition, instituted on 11th June, 1991, on the ground that the criminal court had acquitted him on the self-same

[3] High Court
[4] LPA 1164 of 2024
[5] CM-4377-CWP-2024
[6] CWP-8983-1991 (hereafter earlier writ petition)

charge of defalcation. That earlier writ petition was allowed by the High Court, more than 15 (fifteen) years after its institution, on 12th October, 2007. The operative portion of the order reads thus:

> 18. In the light of foregoing discussion, the present petition shall stand allowed. The enquiry proceedings shall stand quashed. If the petitioner has not attained age of superannuation, he shall be reinstated forthwith. He shall also be entitled to all the consequential benefits relatable to reinstatement. If he has retired from service, he would obviously be entitled to only the consequential benefits.

7. Challenge thereto in an intra-court appeal[7], at the instance of the Bank, failed. The appeal was dismissed *vide* an order dated 20th December, 2007. Such dismissal came to be challenged by the Bank before this Court in a special leave petition[8].

8. It is noted that by an interim order dated 20th March, 2009, passed on the special leave petition, the Bank was granted liberty to conclude the disciplinary proceedings against Kumar and to pass the final order, but was restrained from giving effect thereto without the leave of the Court. In pursuance thereof, the Bank had concluded the disciplinary proceedings and passed a final order of dismissal dated 30th March, 2009; but the same could not be given effect in the wake of the order dated 20th March, 2009.

9. On 31st March, 2009, Kumar, while continuing under suspension, retired from service upon attaining the age of superannuation.

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[7] LPA 246 of 2007 (O&M)
[8] SLP (C) No. 2989 of 2008

10. The Bank's special leave petition, however, failed. It was dismissed on 26th July, 2011 by this Court notwithstanding the fact that the Bank proposed to dismiss Kumar based on the findings returned in respect of the three charges levelled against him.

11. On 10th August, 2011, Kumar submitted a representation before the Bank seeking release of his dues. Having not received a penny, Kumar initiated contempt action[9]. During its pendency, the Bank disbursed Rs.37,07,445.61/- to Kumar on 1st December, 2011. A further sum of Rs.4,89,198.00/- towards Provident Fund dues was thereafter released in his favour. On 28th October, 2013, the contempt action was disposed of by the High Court, recording that the Bank had paid Kumar more than Rs.42,00,000.00/- in compliance with the order dated 12th October, 2007.

12. Kumar thereafter filed a fresh writ petition[10] on 26th May, 2015 before the High Court seeking interest @ 18% p.a. compounded annually on the delayed payment of salary / arrears of salary, from the day each single salary became due and payable to him till 1st December, 2011, (the date of payment, in terms of the High Court's order dated 12th October, 2007) and further interest @ 24% p.a. compounded annually on the total amount of interest so calculated as it stood on 1st December, 2011 until the actual payment is made. The High Court, by

[9] COCP 2688/2011
[10] CWP-11438-2015 (hereafter the subsequent writ petition)

its judgment and order dated 11th December, 2023, spurned such claim observing as under:

> It is a settled principle of law that any relief claimed and not granted or any relief not claimed, will amount to the non-grant of the said relief by the competent Court of law. The petitioner, who appears in person, concedes the fact that no interest was claimed for while seeking the reinstatement with consequential benefits. That being factual situation, the petitioner cannot claim the interest in the subsequent proceedings as grant of the said benefit will amount to modifying the judgment of the Coordinate Bench of this Court dated 12.10.2007, which has already attained finality upto the Hon'ble Supreme Court of India.

13. In view of the subsequent writ petition having failed, on 26th February, 2024, Kumar filed the miscellaneous application referred to above in the earlier writ petition (finally decided on 12th October, 2007) under Section 151, Code of Civil Procedure, 1908[11], after about 17 (seventeen) years of final disposal of the earlier writ petition. The application sought '*interest at the rate of 18% per annum compounded annually on the delayed payment of salary / arrears of salary, from the day each single salary became due / payable to the petitioner till 01.12.11 when the arrears of salary were paid*'.

14. The Single Judge, while dismissing the said application *vide* a judgment and order dated 21st March, 2024, reasoned that Kumar, not having claimed interest in the earlier writ petition, grant of interest at such a belated stage would amount to a modification of the original order dated 12th October, 2007 and that it is inappropriate to grant such relief.

[11] CPC

15. The Division Bench confirmed dismissal as aforesaid *vide* the impugned judgment and order dated 9th May, 2024[12]. It was noticed that Kumar did not file any cross-objection / appeal when the Bank appealed to the Division Bench against the order dated 12th October, 2007. Kumar was represented throughout the proceedings, right till the dismissal of the Bank's special leave petition before this Court. In such circumstances, the Division Bench opined that the principle of finality of proceedings must be adhered to. Having not chosen to seek interest at the relevant stage, it was also held that a subsequent proceeding would be barred in view of the principles of constructive *res judicata* and estoppel.

16. According to Mr. Basant, in the multiple proceedings that ensued, Kumar could have sought interest but chose not to. The claim for interest came to be raised for the first time on 26th May, 2015, in the second writ petition, and, upon its dismissal, by filing the miscellaneous application in the earlier writ petition on 26th February, 2024. In the circumstances, the High Court was justified in declining Kumar's relief, as claimed.

17. While urging us to express agreement with the view taken by the High Court in the impugned order, Mr. Basant referred to us the decision of

[12] impugned order

this Court in ***CIT v. T.P. Kumaran***[13] and placed particular emphasis on paragraph 4 thereof. This Court's succinct and precise ruling reads:

> **4.** 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 res 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.

18. Having considered the facts and the materials on record *vis-à-vis* the applicable law, we find Kumar to have faltered in pursuing the proper remedy.

19. When he instituted the earlier writ petition, Kumar had challenged the initiation of disciplinary proceedings (after acquittal in the criminal trial) and prayed for quashing thereof, together with reinstatement in (sic, resumption of) service (since, from 1978, he had been under suspension). The question of claiming any interest on delayed payment of salary did not quite arise on the date Kumar first entered the portals of the High Court on 11th June, 1991. He tasted success when the first writ petition succeeded in 2007. The challenge to the writ order in the intra-court appeal before the Division Bench having failed in December, 2007, Kumar prevailed over the Bank once again. Following another unsuccessful foray by the Bank before this Court through a special

[13] (1996) 10 SCC 561

leave petition, which stood dismissed in July, 2011, the proceedings attained finality. Between 1991 and 2011, Kumar spent the major part of the remaining tenure of service under suspension and embroiled in litigation and, in the meanwhile, retired on 31st March, 2009.

20. This being the trajectory of proceedings since litigation commenced on 11th June, 1991, and considering the cause of action (primary challenge to initiation of the disciplinary proceedings and claiming relief of quashing thereof together with reinstatement in service) that triggered the institution of the earlier writ petition, did non-payment of salary constitute any part of Kumar's grievance that he could have legitimately raised in the first writ petition? Did also a cause of action accrue to Kumar for claiming interest? We think not! A right to relief ordinarily relates back to the date the proceedings are instituted. The crucial date here is 11th June, 1991. Res judicata and/or principles analogous thereto and the bar of Order II Rule 2, CPC apply only to a claim that could have been raised when the earlier writ petition was instituted. On 11th June, 1991, Kumar had no claim for interest, having not foreseen that it would take years for the proceedings to conclude. The Single Judge, therefore, while making the order dated 12th October, 2007, was quite right in directing Kumar's reinstatement in service, provided he had not retired, and the release of all consequential benefits relatable to such reinstatement. Since Kumar was under suspension and must have been in receipt of subsistence

allowance, consequential benefits would include payment of salary for the entire period spent under suspension, minus the subsistence allowance and other notional benefits, if any. Once the financial benefits were released to Kumar following the dismissal of the special leave petition by this Court and during the contempt action, Kumar invoked the writ jurisdiction of the High Court a second time, claiming interest. The claim for interest did not arise from the same cause of action which triggered the earlier writ petition but was part of a separate cause of action that arose by virtue of the delay in conclusion of judicial proceedings from the order dated 12th October, 2007, ending with this Court's order dated 26th July, 2011. The delay was a subsequent event during pendency of the earlier writ petition and after its disposal. A claim based on a subsequent cause of action cannot be barred by a judgment on a prior cause of action. That apart, grant of interest required adjudication of disputed facts not forming part of the original *lis* – such as entitlement to interest, the period of delay attributable to each party, the applicable rate, etc. The relief, in such event, being substantive and independent, the proper remedy was a fresh proceeding, which Kumar correctly instituted. However, to his misfortune, the Single Judge dismissed the writ petition on 11th December, 2023, on an untenable ground. In our opinion, Kumar should have challenged the order dismissing his subsequent writ petition by way of an intra-court appeal and not by filing the

miscellaneous application in the earlier writ petition, which involved a different issue, and request for such relief which was not in the nature of seeking clarification of an ambiguous and equivocal order.

21. It is trite that a miscellaneous application in a finally decided writ petition is not an independent proceeding. It has a narrow scope, deriving its sustenance from the main proceeding and can be maintained only for matters ancillary to the disposal: such as correction of an arithmetical or a clerical error, clarification of an ambiguity in the operative part of the order of disposal, modification of the mode of compliance and/or extension of time for implementation, recall of an order of dismissal, etc. It is procedural, not substantive, and cannot be used as a vehicle to agitate, on merits, a subsequent or independent cause of action. Once the main proceedings stand decided, the Court becomes *functus officio* except for the limited purposes, as aforesaid. This Court has held that a miscellaneous application cannot be used to seek (i) reopening of proceedings in respect of a matter providing a fresh cause of action; (ii) a substantive relief that was not granted in the main proceedings; (iii) recall of an order on merits, except in very limited cases of fraud, lack of jurisdiction, or complete breach of the *audi alteram partem* and *nemo debet esse judex in causa sua* rules; (iv) a fresh adjudication on a point that was decided, or that could or should have been raised in the main proceedings; and (iv) a review of the judgment/order on

merits, circumventing the limitation and grounds for review under Order XLVII, CPC / Article 226. This is, however, subject to the limited class of applications that the law permits to be entertained even after disposal of the main proceedings, where the relief sought is truly ancillary to, and in aid of, the order already passed. For the exposition adverted to us, we have drawn guidance from the decisions of this Court in ***State of U.P. v. Brahma Dutt Sharma***[14]***, Budhia Swain v. Gopinath Deb***[15], ***Ram Chandra Singh v. Savitri Devi***[16], ***K.A. Ansari v. Indian Airlines Ltd.***[17] and ***Government of NCT of Delhi v. K.L. Rathi Steels Limited***[18].

22. To our mind, the miscellaneous application of Kumar was not seeking a clarification as in ***K. A. Ansari*** (supra); on the contrary, it was a substantive claim for interest dressed as a miscellaneous prayer, akin to fresh relief claimed in ***Brahma Dutt Sharma*** (supra). Once the substantive claim for interest raised in the subsequent writ petition stood rejected, the miscellaneous application in the earlier writ petition was no longer a legally available option for Kumar. The Single Judge, followed by the Division Bench, did not, therefore, commit any error in dismissing the miscellaneous application and the appeal arising therefrom. This appeal, based on the satisfaction that the Division

[14] (1987) 2 SCC 179
[15] (1999) 4 SCC 396
[16] (2004) 12 SCC 713
[17] (2009) 2 SCC 164
[18] (2024) 7 SCC 315

Bench was right in upholding the order of the Single Judge, would, thus, seem not to merit any further consideration.

23. When Kumar claimed interest, it was a claim for restitution for delay *pendente lite* and during the appeal(s), a distinct cause of action arising subsequently. Facts not in dispute, the Single Judge seized of the subsequent writ petition could and should have considered the claim on its merits instead of dismissing the same. The misconception about interest has been clarified by this Court in ***Alok Shanker Pandey v. Union of India***[19]*,* which observed that it is not a penalty or punishment at all; it is a normal accretion on capital. Therefore, it is clear that Kumar, though entitled to lay claim to interest, was shown the door by the High Court without justification. It is here that we are reminded of the salutary principle that an act of court should harm no litigant. This Court has repeatedly applied the *actus curiae neminem gravabit* rule, which we need not refer to at this stage in detail.

24. Also, we need to bear in mind that Kumar initially had to contest criminal proceedings for around a dozen years and, thereafter, was embroiled in writ litigation for more than three decades. Despite an order of dismissal from service hanging over his head as a Damocles sword, which could not ultimately be enforced, he had wrongfully been kept away from discharge of duty since 22nd September, 1978 (date of suspension) till 31st March, 2009 (date of his retirement). Though the

[19] (2007) 3 SCC 545

claim for grant of interest could have legitimately been raised in an intra-court appeal from the order dated 11th December, 2023, it was mistakenly raised in the miscellaneous application, which was indeed not maintainable; and omission to claim interest before the appropriate fora has deprived him of money which was otherwise due. In fact, neither the Single Judges (dismissing the subsequent writ petition and the miscellaneous application) nor the Division Bench (upholding dismissal of the miscellaneous application) held that Kumar was not entitled to an order for grant of interest.

25. Given the facts that Kumar had to run from pillar to post to obtain an order granting interest across various fora for a long time, and now that he is in the twilight of his life, being a septuagenarian, a compassionate view may not be wholly unjust and inappropriate in the peculiar facts and circumstances of the case. We may draw inspiration from the decision in ***Jeypore Sugar Company Ltd. v. Sales Tax Officer***[20], where this Court held as follows:

> **5.** … According to us, it would not be just and proper to deny relief to the appellant, which is otherwise due, on the ground that earlier it had only assailed the question of exigibility to tax. It is correct that the plea now taken could have been advanced earlier as well, but the fact this was not done, should not be a ground to deny the relief which is otherwise due to the appellant. The technical plea of constructive res judicata should not stand in the way of the appellant in a case of the present nature.

26. The Bank paid an aggregate sum of about Rs.42,00,000.00/- to Kumar on 1st December, 2011. In exercise of our powers under Article 142 of

[20] (1998) 9 SCC 358

the Constitution of India, we are of the considered opinion that an additional sum of Rs.5,00,000/-, if paid by the Bank to Kumar, would sufficiently serve the ends of justice. We, thus, order accordingly. The said additional sum, which shall constitute full and final settlement of Kumar's dues against the Bank, shall be paid to him within 2 (two) months from the date of production of a copy of this judgment before the competent authority of the Bank.

27. The appeal stands disposed of on the aforesaid terms. Connected applications, if any, shall also stand disposed of.

28. We record our appreciation for the assistance rendered by the *amicus*, Mr. Gopal Jha.

.....J.
(DIPANKAR DATTA)

.....J.
(SHEEL NAGU)

NEW DELHI;
NOVEMBER 18, 2026.