

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

Suit No. 156 of 2025
[MCB Bank Ltd. v Sindh Employees' Social Security Institution]

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on CMA No.1683/2025 (U/A)
2. For orders on CMA No. 1684/2025 (Stay)

04.02.2025

Mr. Rashid Anwer, Advocate for the Plaintiff alongwith M/s
Adil Saeed & Muhammad Ali Akhtar Advocates.

Adnan Iqbal Chaudhry J. - Urgency granted. The Plaintiff Bank has received notice dated 01.01.2025 under section 81 of the Land Revenue Act, 1967 **[impugned notice]** for recovery of arrears of social security contributions due for the period July 2023 to June 2024 under the Sindh Employees' Social Security Act, 2016 **[the Act]** section 24(2) whereof provides the manner of such recovery. The impugned notice is pursuant to a provisional assessment dated 11.11.2024 made by the Sindh Employees Social Security Institution **[SESSI]** under section 23(3) of the Act for aforesaid period when the Plaintiff did not provide record for inspection to ascertain identity of persons required to be secured and quantum of the Plaintiffs' liability for contributions under the Act. Such record had been sought by the SESSI under section 23(1) of the Act by various notices both for persons directly employed by the Plaintiff and for persons indirectly employed through third-party service providers.

Against the impugned notice dated 01.01.2025, the Plaintiff first made a complaint to the SESSI under section 61 of the Act. However, the complaint was not entertained as the Plaintiff did not deposit 25% of the impugned demand as required by the proviso to section 61. The Plaintiff has now filed suit to challenge the impugned notice and with it prays for a declaration that the proviso to section 61 of the Act requiring deposit of 25% is *ultra vires* the Constitution of Pakistan. By CMA No. 1684/2025 the Plaintiff also prays for an order to stay the impugned notice.

Regarding persons directly employed by the Plaintiff it is submitted that such employees are on wages that exceed the upper wage limit determined under section 75 of the Act and therefore excluded from the purview of the Act by section 2(9)(e). As regards persons indirectly employed through third-party service providers, it is submitted that those persons are employees of the third-party contractor and therefore the Plaintiff is not liable to pay contributions for them to the SESSI. Learned counsel places reliance on an interim stay order dated 16.04.2024 operating in Suit No. 376/2024 which was filed by the Plaintiff against SESSI in respect of contributions demanded for the previous financial year 2022-2023.

Having perused the scheme of the Act, it appears that the question whether a person employed by the Plaintiff is a 'secured person' as defined in the Act and for whom the Plaintiff is required to make contribution to SESSI, that is a dispute that falls for determination by the SESSI under section 61(a) of the Act. Similarly, the question whether the Plaintiff can be said to be 'employer' of persons engaged through third-party contractors, that too falls for determination by SESSI under section 61(d) of the Act. A decision by the SESSI under section 61 of the Act is then appealable before a Social Security Court under section 63 of the Act which has exclusive jurisdiction as per section 65 to examine such decision. Thereafter, an appeal lies before the High Court under section 68(2) of the Act if the order of the Social Security Court involves a substantial question of law. Therefore, in the presence of special remedies before special *fora* available under the Act to challenge the impugned notice, a question arises to the maintainability of a civil suit.

Admittedly, the Plaintiff had invoked section 61 of the Act but did not deposit 25% of the disputed demand as required by the proviso to section 61. It is contended by learned counsel that such requirement is *ultra vires* Article 10-A of the Constitution of Pakistan, hence the suit for such declaration. Learned counsel is reminded that for suits in fiscal matters this Court too requires the plaintiff to deposit 50% of the demand with the concerned department as mandated by the Supreme Court in *Searle IV Solution*

(Pot.) Ltd. v. Federation of Pakistan (2018 SCMR 1444). But even then, until the Court is convinced to pass a decree to declare a statutory provision *ultra vires* the Constitution, the statute must be adhered to. Therefore, I do not see how any temporary injunction can be passed to by-pass the proviso to section 61 of the Act. The order dated 16.04.2024 operating in Suit No. 376/2024 is only an interim order and does not advance the Plaintiff's case here. In these circumstances, I am not inclined to issue notice. CMA No. 1684/2025 is dismissed as not maintainable.

At this juncture learned counsel prays that the impugned notice may be suspended till such time the Plaintiff avails the remedy under section 61 the Act. It is observed that upon filing a complaint under section 61 and making the requisite deposit, if the SESSI persists with recovery before deciding the complaint, the Plaintiff may move a fresh stay application.

JUDGE